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Security Council

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# Letter dated 19 November 2008 from the Chargé d'affaires a.i. of the Permanent Mission of Poland to the United Nations addressed to the President of the Security Council

Upon instruction from my Government, I have the honour to transmit herewith a letter from the Minister of Foreign Affairs of Poland regarding the decision taken by the Republic of Poland to withdraw its military contingent from Iraq (see annex).

I would highly appreciate if you would circulate the present letter and its annex as a document of the Security Council.

(*Signed*) Pawel **Herczyński**
Chargé d'affaires

08-61328 (E) 251108

## Annex to the letter dated 19 November 2008 from the Chargé d'affaires a.i. of the Permanent Mission of Poland to the United Nations addressed to the President of the Security Council

Warsaw, 13 November 2008

**Republic of Poland**
**Minister of Foreign Affairs**
Radoslaw Sikorski

1. On 16 July 2008 Poland transferred to the Iraqi authorities control of the province of Al-Qadisiyah, for whose security and stabilization Poland had been responsible in the framework of the multinational force. The process of withdrawing Polish military personnel from Iraq was concluded by the end of October 2008.

2. The Polish military contingent had been deployed to Iraq in response to the appeal of the Security Council for assistance to the people of Iraq in their efforts to reform their institutions and rebuild their country, as contained in its resolution 1483 (2003).

3. The Minister of Foreign Affairs of the Republic of Poland, in his letter of 8 September 2003, to the President of the Security Council, elaborated the nature, goals and premises of Poland's military and civilian participation in the stabilization force.

4. In Iraq, Poland pursued the basic goal of ensuring the security of the Iraqi people and assisting them in the social, economic and political reconstruction of the country, including the creation of durable bases for the observance of universally recognized human rights, good governance, the protection of territorial integrity and control by the Iraqis of their own national resources.

5. Poland performed its mission in Iraq with due respect for the ethnic, cultural and religious diversity of the Iraqi people and concern for the protection of the country's rich cultural heritage.

6. The decision of the Government of the Republic of Poland to withdraw the Polish military contingent was taken within the framework of the multinational force in Iraq, in collaboration and after prior consultations with the Iraqi authorities at Government and local levels. The decision takes into account the legitimate strivings and attained capability of the Iraqi authorities to ensure the security and effective administration of the mission area of the Polish Military Contingent.

7. In implementing its mission in Iraq, Poland fulfilled its goals and made a multifaceted contribution to building a new, democratic State, sharing with Iraq its unique experience gained in the course of Poland's own systemic (political, social and economic) transformations after 1989.

8. Poland's five-year participation in the stabilization mission required substantial organizational, human and financial efforts on the part of the Polish Armed Forces and the country as a whole. Sixteen thousand troops served in Iraq in ten shifts. Twenty-two officers and soldiers lost their lives during the mission.

9. Throughout the deployment of its forces in Iraq, Poland devoted much effort to the social and economic reconstruction of the country. It was obvious from the outset that military action needed to be coupled with peacebuilding. That is why the

Polish-led Multinational Division Centre-South pursued reconstruction and development projects worth many millions of dollars, designed to improve life for the local population and create conditions for long-term development of the province. These projects included, inter alia:

- the transfer to the Iraqis in June 2008 of agricultural equipment worth 5.6 million USD, including tractors, trailers, pumps and water tanks;
- the transfer in June 2008 of humanitarian aid to the Mother and Child Hospital in Al-Diwaniyah, including wheelchairs, and disposable and sanitary medical materials;
- the transfer in May 2008 of seven fully equipped ambulances for the use of the medical service of the province of Al-Qadisiyah;
- ongoing provision of medical services to the local population; each week assistance was provided to some 150 Iraqi patients.

10. Despite the progress made towards normalization, Poland is aware of the challenges facing Iraq. The Polish Government believes that the United Nations should continue to play a leading role in supporting the efforts of the Iraqi people and the country's Government to consolidate national sovereignty and bring about social, economic and political reconstruction of the country.

11. Poland is prepared to continue supporting the Iraqi authorities in their efforts to ensure the effective security of the citizens of Iraq and their endeavours to rebuild and develop the country, both in the framework of international organizations and through development cooperation on the basis of mutually advantageous bilateral accords.

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**Letter dated 20 November 2008 from the Chargé d'affaires a.i. of the Permanent Mission of Ethiopia to the United Nations addressed to the President of the Security Council**

I have the honour to request your kind assistance in circulating the present letter and its annex, the communiqué issued by the Intergovernmental Authority on Development on 18 November 2008, as a document of the Security Council.

(*Signed*) Negash Kebret **Botora**
Ambassador
Chargé d'affaires a.i.

08-61347 (E) 251108

## Annex to the letter dated 20 November 2008 from the Chargé d'affaires a.i. of the Permanent Mission of Ethiopia to the United Nations addressed to the President of the Security Council

## Communiqué of the thirtieth extraordinary session of the Council of Ministers of the Intergovernmental Authority on Development (IGAD) on the prevailing political and security situation in Somalia, Addis Ababa, Ethiopia, 18 November 2008

The 30th Extraordinary Meeting of the IGAD Council of Ministers was convened at Addis Ababa, Ethiopia, on 18 November 2008 to discuss the situation in Somalia. The Council was chaired by H. E. Seyoum Mesfin, Minister of Foreign Affairs of the Federal Democratic Republic of Ethiopia and the current Chairperson of the IGAD Council of Ministers. It was attended by H. E. Mahmoud Ali Yusuf, Minister of Foreign Affairs of the Republic of Djibouti; H. E. Ali A. Jama, Minister of Foreign Affairs of the Transitional Federal Government of Somalia; H. E. Deng Alor Kual, Minister of Foreign Affairs of the Republic of the Sudan; H. E. Richard Onyonka, Assistant Minister of Foreign Affairs representing the Minister of Foreign Affairs of the Republic of Kenya; and H. E. Mull S. Katende, representing the Minister of Foreign Affairs of the Republic of Uganda.

The meeting was attended by representatives of the United Nations, African Union and IGAD Partners Forum (IPF).

The Council was briefed by H. E. Ali Jama, Minister of Foreign Affairs of the Transitional Federal Government of Somalia on the current prevailing situation in Somalia. It was also briefed by H. E. Seyoum Mesfin on the meetings held in Addis Ababa with President Abdullahi Yusuf and Prime Minister Nur Ade.

After deliberating at length on the prevailing political and security situation in Somalia, the Council:

1. *Expresses* utmost dismay on the failure of the top leadership of the Transitional Federal Government (TFG) to agree on the constitution of a new cabinet for Somalia, and the formation of the Banadir Administration as per the Declaration of the 13th Extraordinary Session of the IGAD Assembly of Heads of State and Government issued on 29 October 2008.

2. *Regrets* the fact that once again the Somali leadership has failed its people, the regional and the international communities at large, by failing to implement the agreements they consented to as set out in the Djibouti Agreement(s), the Addis Ababa Roadmap and the Nairobi Declaration resulting into the deteriorating security and political situation in the country, and *further reiterates* that the crucial challenge in Somalia remains the lack of political will and commitment and not security.

3. *Reminds* the leaderships of Transitional Federal Institutions (TFIs) of the decisions contained in the Declaration of the 13th Extraordinary Summit of the IGAD Assembly of Heads of State and Government held at Nairobi, Kenya (especially paragraph 13), and *affirms* that those decisions must be implemented without any further renegotiation or delay.

4. *Welcomes* the decision of the government of Kenya calling upon the members of the Somali Transitional Federal Parliament still in Kenya to return home to assume their responsibilities as legislators, and *calls upon* all the others in the Diaspora to do the same.

5. *Welcomes* the statement of the Peace and Security Council (PSC) of the African Union (AU) made at its 156th meeting on 11 November 2008, and the press release issued by the United Nations Political Office for Somalia (UNPOS) on 17 November 2008, appealing to all Somalia's leading figures to put aside their differences and unite their efforts in the interest of their people and their country.

6. *Reiterates and supports* the call by the African Union to all countries that promised to provide troops to AMISOM to do so without any further delay.

7. *Calls upon* the international community in particular the European Union and the European Commission; the United Nations, the League of Arab States, the Organization of Islamic Countries and other potential partners to provide the resources necessary to strengthen the AMISOM deployment, and the 10,000 Joint Somali Security forces.

8. *Reiterates and affirms* that the parties should comply and implement the decisions of the Joint Security Committee (JSC) as set out in the Djibouti Agreement of 26 October 2008, and ensure that the timelines set out therein are strictly adhered to.

9. *Urges* the parties to expedite the formation of a government of national unity and an all-inclusive parliament as per their previous agreement, and seize the opportunity of the upcoming meeting between the leaderships of the TFG and ARS starting on 22 November 2008 in Djibouti to do so.

10. *Further urges* the United Nations Security Council (UNSC) to assume responsibility to save from collapse the institutions of the TFG in order to avoid the worsening humanitarian situation that would result therefrom.

11. *Decides* with immediate effect to impose targeted sanctions including travel bans, freezing of assets among others, against all those in and outside Somalia who have become obstacles to the achievement of peace in Somali, and *calls upon* the African Union and the UNSC to do the same.

12. *Condemns* the continued escalation of acts of piracy along the coastlines of Somalia and *reiterates* the region's resolve to work together with the international community to eradicate the crime. In this context the Council underlines that a comprehensive approach including the building of appropriate institutions of governance in Somalia is essential to eradicate this menace.

13. *Recommends* the convening of an Extraordinary meeting of the IGAD Assembly of Heads of State and Government according to paragraph 17 of the Nairobi Declaration to be held in the first part of December 2008 to review all options, and *recommends further* to the IGAD Assembly of Heads of State and Government to consider withdrawing political recognition and support on anyone in the Somali leadership who is an obstacle to resolving the Somalia problem.

14. *Decides* to remain seized of the matter.

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**Identical letters dated 20 November 2008 from the Permanent Representative of the Democratic Republic of the Congo to the United Nations addressed to the Secretary-General and the President of the Security Council**

On instructions from my Government, and further to my letter dated 10 October 2008 (S/2008/644), I have the honour to inquire as to what action you have taken to relieve General Karake Karenzi, commander of the Rwandan contingent operating under the United Nations-African Union Mission in Darfur (UNAMID), of his duties.

My Government holds this individual responsible for the massacres perpetrated in Manono (Katanga Province) in 1999, and for the clashes that destroyed half of the town of Kisangani (Eastern Province) in 2000.

Furthermore, this individual is being sought by various jurisdictions for his alleged role in massacres and violations committed in his own country.

I should be grateful if you would arrange for the present letter to be circulated as a document of the Council.

(*Signed*) Atoki **Ileka**
Ambassador

08-61341 (E) 241108 241108

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Security Council

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# Letter dated 20 November 2008 from the Permanent Representative of Georgia to the United Nations addressed to the President of the Security Council

I have the honour of writing to you in your capacity as the President of the Security Council for the month of November 2008 to request your kind assistance in circulating the present letter and the attached statements of the Ministry of Foreign Affairs of Georgia dated 19 and 20 November 2008 (see annexes I and II) as a document of the Security Council.

(*Signed*) Irakli Alasania
Permanent Representative

08-61335 (E) 251108

## Annex I to the letter dated 20 November 2008 from the Permanent Representative of Georgia to the United Nations addressed to the President of the Security Council

### Statement of the Ministry of Foreign Affairs of Georgia

The Geneva talks resumed on 18 and 19 November 2008. Meetings of the two working groups, on security and stability issues in Abkhazia and the Tskhinvali Region and the return of internally displaced persons and refugees, were held: participants took part in the deliberations on an informal basis in that individual capacity. The head of the provisional administration of the former South Ossetian Autonomous District, Mr. Dimitri Sanakoev, and the Chairman of the Government of the Autonomous Republic of Abkhazia, Mr. Malkhaz Akishbaia, participated in the working groups together with other representatives of the communities of the Tskhinvali Region and Abkhazia. These groups were also attended by the representatives of the proxy regimes. Deliberations, which were moderated by the United Nations, the European Union (EU) and the Organization for Security and Cooperation in Europe (OSCE), and attended by representatives from Georgia, the United States of America and the Russian Federation, were conducted in a positive working atmosphere.

At both working groups participants from the Government of Georgia, the community of the Tskhinvali Region/South Ossetia, Georgia and the community of Abkhazia, Georgia, raised the issues of Russia's non-compliance with the six-point ceasefire agreement, immediate access of international monitors and observers to the occupied regions as a first step towards de-occupation of those regions and the creation of new international security arrangements in the Tskhinvali Region and Abkhazia.

At the meeting of the working group on security and stability issues, participants from the Government of Georgia, the community of the Tskhinvali Region/South Ossetia, Georgia and the community of Abkhazia, Georgia, stressed the necessity of elaborating a new police and peacekeeping mission. Participants expressed their disappointment over the attack on the observers of the EU monitoring mission and continuous attempts to discredit OSCE activities. The moderators particularly emphasized the urgent need for the access of EU and OSCE monitors into the occupied territories, as well as the necessity to extend the mandates of the OSCE Mission to Georgia and the United Nations Observer Mission in Georgia (UNOMIG). Participants noted that it is essential to fulfil all the provisions of the 12 August six-point ceasefire agreement and to obtain the full withdrawal of Russian troops from the occupied territories of Georgia. Participants noted the extreme urgency of the withdrawal of Russian troops from the Akhalgori region and Upper Abkhazia, as well as the village of Perevi.

Participants from the Government of Georgia, the community of the Tskhinvali Region/South Ossetia, Georgia, and the community of Abkhazia, Georgia, brought issues to the attention of the working group on security and stability, including frequent lootings and kidnappings and attacks on Georgian law enforcement personnel and civilians, as a result of which 10 persons have been killed over the last two months. All participants agreed that the security situation on the ground remains highly volatile and that it should constitute the focus of the future

discussions in Geneva. Participants agreed in principle to elaborate a day-to-day incident prevention and management mechanism, to reflect upon a ceasefire/peacekeeping regime setting forth the rules for the minimal security framework along the administrative border and to establish crossing points in order to ensure that the movement of the local population is unhindered.

At the working group on internally displaced persons and refugees there was a general consensus that the internationally recognized right of the internally displaced persons to safe and dignified return to their places of residence shall be observed. Georgian participants emphasized that the access of international monitors to the occupied regions, the de-occupation of those regions and the elaboration of new police and peacekeeping mechanisms are essential steps towards elaborating secure environment permissive to the safe and dignified return of the internally displaced persons. It was also stressed that the Georgian villages, destroyed and looted after the August war, had to be restored and rehabilitated, inter alia, with the help of the international community. In this regard it was agreed to structure the deliberations around certain priority areas.

Co-moderators of the working group on internally displaced persons (the Office of the United Nations High Commissioner for Refugees and the European Commission) informed the participants that they are planning to visit Tbilisi, Tskhinvali and Sokhumi in the very near future to conduct an assessment of the existing situation. The Ministry of Foreign Affairs of Georgia hopes that international moderators will not have such artificial obstacles regarding access to the occupied regions as are currently being experienced by other humanitarian organizations.

During the above-mentioned meeting of the working group, particular emphasis was placed on the immediate, full and unhindered access for all humanitarian agencies to the population in need. The international community's strong belief that all humanitarian organizations shall have access to all relevant affected areas from the legal entry points appeared to be obvious.

The Geneva discussions demonstrated that the format had been well prepared and functioning. The Georgian side expresses its hope that the participants will continue to engage in future discussions in good faith, in order to contribute to establishment of the security environment in the Tskhinvali Region and Abkhazia and ensure that the internally displaced persons may return in a safe and dignified manner to their places of residence.

The Georgian side is looking forward to concrete proposals from the co-moderators based on the first day of work in the working groups and to the continuation of the talks on 17 and 18 December in both the plenary and working groups. We stand ready to cooperate intensively with the co-moderators and the participants of the working groups in order to move the peace process forward.

Tbilisi, 19 November 2008

## Annex II to the letter dated 20 November 2008 from the Permanent Representative of Georgia to the United Nations addressed to the President of the Security Council

### Statement of the Ministry of Foreign Affairs of Georgia

On 20 November 2008, the Russian occupation forces stationed in Abkhazia, Georgia, perpetrated another provocation against Georgia. At 6.45 a.m. two armoured personnel carriers followed by the armed formation of a proxy regime crossed over the administrative border from the occupied territory and opened fire towards the police checkpoint located in the nearby Ganmukhuri village. After 15 minutes of open fire the checkpoint and the nearby private building owned by a peaceful civilian were destroyed.

During their retreat, the Russian military forces mined the crossing points in the villages of Otobaia and Ganmukhuri. United Nations monitors were able to videotape the tracks of the Russian armoured personnel carriers, and European Union (EU) monitors also came to the site of the incident.

The incident was repeated at 10.30 a.m. Russians opened fire from a checkpoint located at the administrative border across Otobaia towards the Georgian checkpoint. During the attack, two military helicopters flew low over the village of Ganmukhuri; the two helicopters were caught on camera by EU monitors.

The above incidents underscore that the Russian occupying forces, together with armed formations of the proxy regime, continue to undertake terrorist acts against Georgian law enforcers and civilians in the vicinity of the occupied territories.

These were not isolated cases, but rather two more incidents in a long chain of provocations carried out by Russia. Such provocations, launched from within Russian occupied territories, have become a pattern and often end with casualties. This escalation of tensions undermines security, disrupts the normal rhythm of life and endangers local civilian population, as well as EU monitors stationed there.

Today's incident also forced the closure of schools in Ganmukhuri and Anaklia. It also is deeply worrisome that, inter alia, Georgian students in the occupied territories are denied their right to education in their mother tongue.

As the occupying power, the Russian Federation is fully responsible for provocations against Georgia that are conducted from within territories that Russia controls. The Russian side is also responsible for the human rights violations constantly taking place against the Georgian residents living in the occupied territories.

It is deeply to be regretted that this provocation by Russia was conducted against the backdrop of the just-concluded second round of Geneva peace talks, which represents progress in terms of resumption of the dialogue.

In order to ensure security in the conflict regions, it is imperative for Russia to comply with the six-point ceasefire agreement and withdraw its forces to their positions prior to 7 August. In addition, for the sake of avoiding further provocations, it is necessary for the EU and OSCE monitors to be able to monitor

the occupied territories in accordance with their mandate and to provide the international community with objective information about the situation there.

Georgia calls upon the international community to condemn Russia's provocations and to exert maximum pressure on Russia to fully comply with the ceasefire agreement. This is the only way to avoid a further escalation of the situation.

Tbilisi, 20 November 2008

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# Letter dated 21 November 2008 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council

I have the honour to transmit herewith the assessments of the President and the Prosecutor of the International Criminal Tribunal for Rwanda on the implementation of the completion strategy of the Tribunal, pursuant to Security Council resolution 1534 (2004), as at 3 November 2008 (see enclosure).

I should be grateful if you would transmit the enclosed report to the members of the Security Council.

(*Signed*) Dennis Byron
President

08-61354 (E) 111208

**Enclosure**

[Original: English and French]

# Report on the completion strategy of the International Criminal Tribunal for Rwanda

**(as at 3 November 2008)**

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# INTRODUCTION

1. In 2003, the International Criminal Tribunal for Rwanda ("Tribunal"), in accordance with Security Council Resolution 1503 (2003), formalized a strategy ("Completion Strategy") to achieve the objectives of completing investigations by the end of 2004, all trial activities at first instance by the end of 2008, and all of its work in 2010.

2. The present report, in conjunction with previous submissions to the Security Council pursuant to its Resolution 1534 (2004), provides an overview over the Tribunal's progress to date in implementing the Completion Strategy.[1]

# 1. ACTIVITIES IN CHAMBERS

3. The Tribunal's judicial activities emanate from the three Trial Chambers in Arusha and the Appeals Chamber, located in The Hague. Each case before the Tribunal is heard at first instance by a Trial Chamber of three permanent and *ad litem* Judges, and, if appealed, by five permanent judges of the Appeals Chamber.

## A. Activities at First Instance

4. Since May 2008, one judgement concerning one accused has been delivered.[2] Five cases concerning eight accused are in the judgement drafting phase,[3] with three judgements to be delivered in December 2008. Evidence in two cases concerning five accused has been completed, with the closing arguments yet to be heard.[4] Five trials involving 15 accused are currently ongoing.[5] Six single-accused trials, including one contempt of court case, are scheduled to commence within the next months.[6] Furthermore, the Office of the Prosecutor has requested the referral of five single-accused cases to Rwanda. The Appeals Chamber has recently confirmed the Trial Chambers' denial of the referral motions in two cases.[7]

### a. Judgements (Annex 1(A))

5. On 24 September 2008, Trial Chamber III delivered its judgement in the case of *Siméon Nchamihigo*. Nchamihigo, the former Deputy Prosecutor of Cyangugu *Préfecture*, was convicted of

[1] See the reports submitted to United Nations on 14 July 2003 and 29 September 2003, in connection with the General Assembly resolution 57/289 (2003) and the Tribunal's request to increase the number of *ad litem* judges sitting "at any one time". Completion Strategy reports were submitted to the President of the Security Council on 30 April 2004, 19 November 2004, 23 May 2005, 30 November 2005, 29 May 2006, 8 December 2006, 31 May 2007, 20 November 2007 and 13 May 2008.

[2] *Nshamihigo*: further explanation is provided in section 5.

[3] *Bagasora et al.* (Military I); *Bikindi*; *Zigiranyirazo*; *Renzaho*; *Rukundo*: further explanation is provided in sections 6 to 9.

[4] *Nsengimana*; *Bizimungu et al.*: further explanation is provided in sections 10 to 12.

[5] *Nyiramasuhuko et al.* (Butare), *Ndindiliyimana et al.* (Military II), *Karemera et al.*, *Kalimanzira*, *Setako*: further explanation is provided in sections 13 to 18.

[6] *Nshogoza*, *Bagaragaza*, *Muvunyi*, *Ntwakulilyayo*, *Nzabonimana*, *Ngirabatware*: further explanation is provided in sections 19 to 24.

[7] *Kanyarugika* and *Munyiakazi*: further requests in the cases *Gatete*, *Hategekimana* and *Kayishema* are still pending, see explanation provided in sections 25 to 27.

genocide and extermination, murder and other inhumane acts as crimes against humanity based on his participation in the killing of Tutsi in April 1994 at various places in Cyangugu. In view of the nature of the multiple crimes committed and considering, in particular, Nshamihigo's prominent public position and responsibility as a representative of the Rwandan legal system as an aggravating circumstance, the Chamber sentenced the Accused to life imprisonment. During the trial, the Chamber heard 61 witnesses, including Nchamihigo, over 58 trial days.

### b. Judgements to be Delivered Within the Coming Months (Annex 1 (B))

6. It is anticipated that five Judgements involving eight accused will be issued within the next months. Three of the Judgements are expected to be issued in December 2008.

7. During the reporting period, Trial Chamber I has been writing judgements in two cases, while at the same time conducting trial proceedings in two single-accused cases. The *Military I* trial spanned 408 trial days, during which 242 witnesses testified, and 1,584 exhibits were tendered into evidence. This case involves four former high-ranking military officials (Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze and Anatole Nsengiyumva). Closing arguments were heard between 28 May and 1 June 2007. The judgement is scheduled to be delivered on 18 December 2008. In the trial of *Tharcisse Renzaho*, 53 witnesses testified over 49 trial days. The Chamber heard closing arguments on 14 and 15 February 2008.

8. A section of Trial Chamber II is engaged in judgement drafting in the *Emmanuel Rukundo* case, while in parallel sitting in trial proceedings in the complex multi-accused *Military II* case. In the *Rukundo* case, the Chamber heard closing arguments on 20 February 2008. Fifty witnesses testified over 66 trial days. The Judgement should be issued in the coming months.

9. Trial Chamber III is preparing two judgements. In the *Siméon Bikindi* case, the Chamber heard closing arguments on 26 May 2008 after 57 witnesses had testified over 61 trial days. A site visit in Rwanda was conducted in April 2008. The judgement is scheduled to be delivered on 2 December 2008. In the *Protais Zigiranyarazo* case, the Chamber heard closing arguments on 28 and 29 May 2008. The trial included the hearing of 67 witnesses over 88 trial days and a site visit to Rwanda in November 2007. The Judgement is scheduled to be delivered on 18 December 2008.

### c. Cases where Evidence is Completed and Closing Arguments Will be Heard Soon (Annex 1(C))

10. In two cases concerning five accused, the evidence phase has been completed and the Chambers are awaiting the closing arguments. Judgements in both cases are expected in 2009.

11. Trial Chamber I substantially concluded the hearing of evidence in the case against *Hormisdas Nsengimana*, as projected, on 11 July 2008. Two final Defence witnesses were heard between 15 and 17 September 2008 by video-link. During the reporting period, the Chamber rendered six written and ten oral decisions. The parties will file their closing briefs by 5 December 2008.

12. Trial Chamber II continued sitting in the *Bizimungu et al.* case, which involves four co-accused. The trial resumed on 14 April 2008 and the Chamber sat continuously until 13 June 2008, when the evidentiary phase closed, pending the resolution of a number of outstanding evidentiary issues. Between 1 May and 13 June 2008, the Chamber heard 13 Defence witnesses for Prosper Mugiraneza, including the Accused. This was the last of the four co-Accused to present his case. The Chamber also heard two remaining witnesses for the third co-accused, Jérôme Bicamumpaka, and one Prosecution witness who had been recalled pursuant to a Trial Chamber order. In the reporting period, the Chamber rendered 25 written decisions and visited, between 5 and 10 October 2008, a number of sites in Rwanda. The Prosecution filed its closing brief on 1 October 2008. The Defence closing briefs are to be filed between 10 and 21 November 2008. The oral arguments are scheduled for the week commencing 1 December 2008.

### d. Ongoing Trials (Annex 1(D))

13. Five cases, involving 15 accused, are currently on-going before the Trial Chambers. Three of these cases are multi-accused cases with six, four and three accused respectively, being tried jointly.

14. The Prosecution case against *Ephrem Setako* commenced on 25 August 2008 before Trial Chamber I. On 26 September 2008, the Chamber concluded the first segment of the Prosecution case, having heard 12 witnesses during 21 trial days. As the Chamber is heavily involved in judgement writing in the *Théoneste Bagosora et al.* case and the *Tharcisse Renzaho* trial, the case is scheduled to resume on 16 February 2009, subject to courtroom availability. It is expected that the Prosecution case will require a session of no longer than three weeks to complete. Three written and ten oral decisions were rendered in the reporting period.

15. Since 1 May 2008, two different sections of Trial Chamber II have been engaged in two separate trials. In the *Butare* case, involving six co-accused, Pauline Nyiramasuhuko, Arsène Shalom Ntahobali, Sylvain Nsabimana, Alphonse Nteziryayo, Joseph Kanyabashi and Élie Ndayambaje, the section including Judges Sekule (presiding), Ramaroson and Bossa was sitting over 55 trial days. Kanyabashi, the fifth of the six accused, completed the presentation of his Defence. Three witnesses for Kanyabashi were heard from 1 May 2008 until 20 May 2008, when his Defence was declared closed save for two witnesses who were unavailable to testify at the time. While one witness was dropped, the other one is now scheduled to testify in November 2008. On 20 May 2008, the Defence for Ndayambaje, the last accused in the case, made its opening statement. From 2 June 2008 until 3 July 2008, the Chamber heard the testimonies of 13 witnesses for Ndayambaje. The Chamber adjourned the proceedings on 4 July 2008 instead of 10 July 2008 for lack of available witnesses. The trial resumed on 18 August 2008 after the judicial recess. From 18 August until 24 September 2008, the Chamber heard ten witnesses for Ndayambaje. The Chamber adjourned on 24 September 2008 instead of 1 October 2008 due to lack of witnesses. Two witnesses remain to be heard for Ndayambaje: The Accused himself has been testifying since 20 October 2008, a recalled prosecution witness will be heard from 29 October. Despite the early adjournments, the closing of evidence remains to be expected for mid-November 2008. Since 1 May 2008, the Chamber has issued

11 written decisions and orders including a decision allowing the recall of a Prosecution Witness by the Defence for Kanyabashi and two scheduling orders regarding the filing of the closing briefs.

16. Another section of Trial Chamber II, including Judges de Silva (presiding), Park and Hikmet, continued hearing the *Military II* case, concerning four co-accused former senior military officers. The case resumed on 26 May 2008 with the case of the second co-Accused Augustin Ndindiliyimana who finished presenting his defence on 23 June 2008. The Trial Chamber heard overall 41 witnesses for him. On the same date, the third co-Accused, François-Xavier Nzuwonemeye, commenced presenting his defence case. The Chamber went on judicial recess from 16 July and resumed on 8 September 2008 with the Defence for Nzuwonemeye which finished on 8 October 2008 after 28 witnesses had been heard. Proceedings resumed on 20 October 2008 for the commencement of the case of the fourth co-Accused, Innocent Sagahutu. For him, so far three witnesses have been heard. On 16 September 2008, the Chamber issued a Scheduling Order in which it directed that Sagahutu must finish his defence case by 5 December 2008. During the reporting period, the Chamber rendered twenty written and twelve oral decisions, including, on 22 September 2008, a decision granting in part defence motions claiming a violation by the Prosecutor of his obligation to disclose exculpatory material pursuant to Rule 68 of the Rules of Procedure and Evidence ("the Rules"). The Trial Chamber sat for 39 trial days. During 17 trial days, the unavailability of witnesses for the third co-Accused prevented the Chamber from sitting.

17. In Trial Chamber III, the proceedings in the case against *Callixte Kalimanzira* commenced on 30 April 2008 despite difficulties to find a permanent judge available to preside. The Prosecution closed its case on 30 June 2008, after having called 24 witnesses over 16 trial days. Due to the parallel involvement of the same bench in the *Karemera et al.* case (see below), the Defence case is scheduled to commence on 17 November 2008. It is projected to run over approximately five trial weeks and, due to the Christmas judicial recess, over two trial sessions with completion in the beginning of 2009. Judgement is scheduled for delivery in 2009. Since May 2008, the Chamber has rendered 12 decisions in this case. One of these decisions found that after the close of the Prosecution case, no conviction could be brought on certain allegations, thus clarifying the case that the Defence has to answer and expediting the proceedings.

18. Trial Chamber III also continued hearing evidence in the *Edouard Karemera et al.* case, involving three co-accused. Between 7 April and 15 May 2008, the Chamber heard 13 witnesses. It should be recalled that, during the same period, the same judges of this Chamber also heard the *Kalimanzira* case and that trial days were shared between the two cases. After a recess, allowing the Chamber to sit full time in the *Kalimanzira* case, the Chamber resumed the proceedings in *Karemera et al.*. From 7 until 16 July 2008, it heard nine witnesses for the defence of Karemera, one of the four co-Accused. The proceedings were scheduled to resume on 18 August 2008. However, due to the sudden serious illness of one co-accused, Mathieu Ngirumpatse, the Chamber adjourned the proceedings in light of the standards established by the Appeals Chamber on the right of an accused to attend his trial. The proceedings were scheduled to resume on 20 October 2008, but, on that date, Ngirumpatse required further medical analysis in Nairobi (Kenya). A week later, on 28 October 2008, the Chief Medical Officer of the Tribunal reported that Mathieu Ngirumpatse was unfit to attend any trial proceedings for at least six months. With Ngirumpatse's consent, the Chamber decided to proceed

and hear, in his absence, four Defence witnesses, called by Karemera, who were already present in Arusha. The evidence presented by these four witnesses raised issues that could have rendered difficult their appearance before the Chamber at a later stage. These four witnesses will be heard in the week of 10 November 2008. The Chamber will further hear the parties' arguments in regard to the severance of Ngirumpatse from the on-going trial of the other two co-Accused. Since May 2008, the Chamber has heard ten witnesses over a period of 20 trial days and delivered more than 45 decisions, including decisions related to the management of the trial and the presentation of evidence. As previously indicated, the evidence phase in this case will continue in 2009. Judgement delivery remains anticipated for the end of 2009.

### e. Cases to Commence Within the Next Months (Annexes 2 and 3)

19. Six new trials will commence before the Tribunal in the first half of 2009. In the last report to the Security Council, it was noted that three detainees were waiting for their trials to commence, two Accused were waiting for completion of the judicial process for their transfer to the Tribunal and one person had been recently arrested for contempt of court.

20. The trial of one of the three detainees mentioned in the last report, *Ephrem Setako* has already begun, as mentioned above. The trial of *Michel Bagaragaza* whose referral to the Netherlands was revoked, was anticipated to be completed in 2008. However, as the negotiations for a guilty plea agreement have failed, a new trial date has to yet be set in order to allow both parties to prepare their case. The President will assign the case to a Trial Chamber shortly. For all pre-trial matters in the case of *Callixte Nzabominana,* the President designated Trial Chamber I. This Accused was transferred to the Tribunal in February 2008.

21. Two further accused arrested last year, were transferred to the Tribunal during the reporting period: Dominique Ntawukulilyayo[8] and Augustin Ngibaratware. The first, Ntawukulilyayo, was transferred from France on 5 June 2008. His case was initially earmarked for referral to a national jurisdiction for trial based on the evidence available at the time. After his arrest, the Prosecutor obtained additional evidence indicating that Ntawukulilyayo played a more significant role than initially perceived in the 1994 Rwandan genocide. In addition, the Prosecutor considered the difficulty of a successful referral of the case because of, among other reasons, the newly discovered information. Therefore, the case was brought before the Tribunal. At his initial appearance held on 11 June 2008, Ntawukulilyayo pled not guilty to the three counts in the Indictment. Ngibaratware was transferred from Germany on 8 October 2008. Two days later, he made an initial appearance pleading not guilty to all ten counts in the Indictment. In September 2008, the President designated two sections of Trial Chamber II to deal with all pre-trial matters in those two cases.

22. Léonidas Nshogoza, a former Defence investigator in the *Kamuhanda* case, is indicted for contempt of the Tribunal under Rule 77 of the Rules. The trial was scheduled to commence before a section of Trial Chamber III on 29 September 2008 but due to a dispute related to the legal

[8] In the Indictment, the Accused was named Dominique Ntawukuriryayo. The Accused has clarified that the correct spelling of his name is Ntawukulilyayo.

representation of the Accused, the commencement was postponed. The dispute was resolved on 13 October 2008, and a pre-trial conference was subsequently held on 22 and 30 October 2008. The trial is now expected to commence in the first week of February 2009.

23. On 28 August 2008, the Appeals Chamber overturned the convictions of Tharcisse Muvunyi by Trial Chamber II for certain counts and quashed his conviction for direct and public incitement to commit genocide based on a speech he gave at the Gikore Trade Center. The Appeals Chamber ordered a re-trial limited to the allegations considered in relation to this incident. The President will designate a Trial Chamber for the re-trial shortly.

### f. Requests for Referral (Annex 4)

24. Since June 2007, the Prosecutor has requested the transfer of the cases of one fugitive, Fulgence Kayishema, and of four Accused detained at the Tribunal (Gaspard Kanyarukiga, Idelphonse Hategekimana, Yussuf Munyakazi and Jean-Baptiste Gatete) to Rwanda. In three decisions in respect of the Accused Munyakazi (28 May 2008), Kanyarukiga (6 June 2008) and Hategekimana (19 June 2008), the requests for referral were denied by different sections of the Trial Chambers. In the cases of *Munyakazi* and *Kanyarukiga,* the Appeals Chamber confirmed on 9 October and 30 October 2008 the denial of the referral by section of Trial Chambers III and I, respectively.

25. The appeal on the Trial Chamber decision on *Hategekimana* is still pending, and a decision is expected before the end of 2008. It may follow the results in *Munyakazi* and *Kanyarukiga*, given that the issues for determination were similar in all three appeals. The other requests for the referral of the *Gatete* and *Kayishema* cases are under consideration in the Trial Chambers, awaiting the decisions of the Appeals Chamber. Pending those decisions, provisions are being made for the eventuality that all four cases concerning detainees[9] will be tried before the Tribunal, while Kayishema is still at large. The Security Council will continue to receive updated information regarding the remaining referral cases.

26. At present, Trial Chambers I and III are overseeing the trial-readiness of the cases of *Gatete*, *Hategekimana*, *Kayishema* and *Munyiakazi*, in parallel with the Rule 11 *bis* proceedings. During the reporting period, Trial Chamber I issued five written decisions in the *Kanyarukiga* and *Gatete* cases, including consideration of *amici curiae* requests from the Republic of Rwanda, the International Criminal Defence Attorneys Association (ICDAA), as well *Ibuka* and *Avega* (organisations for genocide survivors). Trial Chamber III issued four decisions in the case of *Kayishema*, including one order to appoint Defence counsel to represent the interests of the Accused in his absence.

## B. Activities at the Appeals Chamber

27. The Appeals Chamber delivered its judgement in the case of *Tharcisse Muvunyi,* as mentioned above, on 29 August 2008, bringing to 26 the total number of persons whose appeals have been completed. In that judgement, the Appeals Chamber overturned convictions for genocide, direct and

[9] *Gatete, Hategekimana, Kanyarugika, Munyakazi.*

public incitement to commit genocide based on a speech given by Muvunyi in Gikonko, and other inhumane acts as a crime against humanity. It further ordered retrial on one count pursuant to Rule 118 of the Rules.

28. The Appeals Chamber is presently seized of an appeal from judgement in the case of François Karera. The appeal in the *Karera* case was filed in January 2008. The Appeals Chamber heard oral arguments in this case on 28 August 2008, and it is anticipated that the Appeals Chamber will deliver a judgement on the case shortly after the end of the year. Since the last report in May 2008, in addition to the *Muvunyi* judgement, the Appeals Chamber issued two decisions concerning referrals to Rwanda, as mentioned above, two decisions disposing of interlocutory appeals, eleven decisions concerning review or other requests, and 58 pre-appeal orders and decisions.

## 2. MEASURES IMPLEMENTING THE COMPLETION STRATEGY

29. The following section supplements prior reports and highlights essential tools and elements of the Tribunal's efforts to comply with its Completion Strategy.

### A. Management of Trial Work

#### a. Judicial Calendar

30. The particularly high workload level at the Tribunal at this stage of its operation requires strong management of its resources to optimize their use. Every six months, the Office of the President issues for this purpose a Judicial Calendar, after consultation with the Presiding Judges, taking into account the particularities of each case and the overall workload in Chambers. The scheduling of individual cases is done by the Trial Chambers in consultation with the parties, taking into consideration the requirements of a fair trial.

31. The Judicial Calendar aims to optimize the use of courtrooms and to stress the efficient use of time and resources. Between May 2008 and November 2008, seven different sections of the Trial Chambers used the four courtrooms of the Tribunal in nine different cases. Other Trial Chamber sections used the courtrooms as well, dealing with pre-trial matters and referral decisions.

32. The last report indicated the time standards used for projections in the Judicial Calendar for single-accused cases. The projections remain based on a ten-week average for the presentation of both Prosecution and Defence evidence. This period can be longer, depending on the availability of courtroom facilities and in particular taking into account the fact that most judges sit in at least two cases simultaneously. However, a shorter time period may be sufficient under specific circumstances, such as in the contempt case of *Nshogoza* or the retrial of *Muvunyi*. Time standards are also used, for example, for the average six to eight week break between the presentation of the Prosecution and the Defence case. After closure of the Defence case, another break is required to allow the parties to

prepare and file their closing briefs. This break is projected to average of two months, subject to any imperatives caused by translation needs. Thereafter, closing arguments should not be heard later than three weeks after filing of the closing briefs. For the drafting of the judgement, the average time for planning purposes has been slightly modified to four months on average for a single-accused case. Again, the involvement of a Trial Chamber and its support team in several cases at the same time will have an impact on the time required for writing the judgement.

33. At present, all multi-accused cases are already in the defence phase of presenting evidence or beyond. The projections for multi-accused cases require more flexibility than for single-accused cases. Recent experience has shown that Trial Chambers have difficulties meeting the prior projection of a six-month average for judgement drafting. Therefore, the projections for each multi-accused cases are constantly reviewed, in close coordination with the presiding Judges.

**b. Management of Proceedings**

34. Prior reports have described practices developed by the Trial Chambers to ensure the smooth and expeditious conduct of trials while upholding the requirements of trial fairness and protecting the rights of the accused. Measures have been developed to improve trial-readiness of cases by pre-prosecution and pre-defence status conferences. With a view to the upcoming workload in 2009, particular efforts are being made to further improve the management of proceedings. Two external consultants have assisted these efforts in October and November 2008.

35. The Trial Chambers also work on further streamlining proceedings during the on-going trials. In particular, the parties' closing arguments have in many cases presented a particular challenge for an expeditious trial due to their length. In the *Military I* case, for example, the closing briefs averaged 830 pages for each of the four accused and the Prosecution. In May 2008, the Tribunal organized a seminar for both Prosecution and Defence Counsel on writing and presenting closing arguments to the Trial Chambers. The main goal was to discuss the expectations of Trial Chambers when receiving the parties' closing arguments and the role of the written arguments as persuasive tools. In addition, the Trial Chambers have worked in cooperation with the parties to determine a maximum number of pages for closing briefs.

**c. Performance Standard Tools**

36. The successful accomplishment of the Tribunal's goal to meet the requirements of the Completion Strategy can be facilitated through objective performance standards to evaluate achievements and to identify and address difficulties. They are also helpful for purposes of internal and external audit.

37. The Office of the President has developed a number of performance standard tools for this purpose, including charts presenting the percentage of use of each courtroom over the year, the actual

hours spent in court against the projected judicial calendar for each case and the compilation of statistics connected with the progress of cases. These grids are continuously updated, fine-tuned and analysed.

## B. Judges and Staff Management

### a. Judges

38. Currently, 11 permanent judges serve at the Tribunal, including two assigned to the Appeals Chamber. In addition, nine *ad litem* judges serve in Arusha. Two of the permanent judges and one *ad litem* judge will resign at the end of 2008. The Tribunal is in the process of addressing replacement for them. Nine additional *ad litem* judges have been elected by the General Assembly, but not appointed yet to serve at the Tribunal. On 18 July 2008, the Security Council adopted Resolution 1824, which extended the terms of office of all permanent and *ad litem* judges of the Tribunal until 31 December 2009, or until the completion of the cases to which they are assigned if sooner. This decision is essential in ensuring that the Tribunal can plan and conduct trials with the required stability.

39. Different from how their function was initially conceived, the *ad litem* judges have worked in the same way and with the same workload as permanent judges, thereby contributing greatly to the Tribunal's achievements and making the simultaneous hearing of an increased number of cases possible. By 31 December 2008, seven *ad litem* judges will have served at the Tribunal for more than three years continuously. Despite this comparable work situation of permanent and *ad litem* judges, the status of *ad litem* judges differs from the status of permanent judges with regard to benefits and pension rights. The different status currently also requires that a permanent judge be part of each Trial Chamber. With more new cases to start soon, this issue should be addressed. The Tribunal is currently discussing related suggestions for possible amendments to the Statute for submission to the Security Council.

40. The President of the Tribunal also continues to explore mechanisms to enable the Appeals Chamber to deal with the substantially increased work load to be expected in 2009 and 2010, in light of the increased number of first instance judgements to be issued.

### b. Staff Management

41. The Tribunal's capacity to comply with the Completion Strategy depends on its ability to retain competent, knowledgeable and experienced staff whose services are required for the successful achievement of its mandate. The Tribunal, therefore, seeks the continuing support of the Security Council and the Member States to ensure the retention of essential and most experienced staff until the end of its mandate.

42. As indicated in earlier reports, the problem of staff retention is a major source of concern to the Tribunal. With the end of Tribunal's mandate approaching, the situation is even more critical than before because of continuing high staff turnover and the inability to offer long-term appointments. The steady progression and completion of trials envisaged for 2009 may not be assured if the continued loss of staff remains unabated. There is therefore a need to address the issue of predictability of employment for essential staff until the completion of our work.

43. To cushion the impact of the Tribunal's drawdown plan and address the exceptional situation that comes with it, the Tribunal has engaged the support of the Department of Management, especially at the Office of the Controller and Office of Human Resources Management, to explore and adopt flexible exceptional measures and a common strategy in order to face the challenges of downsizing and to ensure that the Tribunal completes its work within the set timeframes.

44. A significant increase in the judicial workload for the biennium 2008-2009 results from the arrest of three fugitives and the revision of the trial schedule for 2009, due to changes in the completion schedule of trials projected to end in 2008. The Secretary-General submitted the Tribunal's revised estimates for 2008-2009, including additional requirements for the retention of staff to support the trials planned for 2009.

## C. Work of the Office of the Prosecutor

45. Since 2004, when all new investigations in respect of the genocide were completed, the Office of the Prosecutor ("OTP") and its investigators have increasingly focused on support for preparation and conduct of trials, appeals and requests for referral of cases to national jurisdictions. For the pre-trial phase of each case, this means in particular ensuring the trial-readiness of all evidence, including the witnesses. Furthermore, additional investigations may be required during a trial to provide for additional and corroborating evidence and to address the Defence case, including any necessary rebuttal evidence.

46. The OTP Tracking Team continues to intensify its efforts in locating the 13 remaining fugitives. The Prosecutor intends to request the referral of nine of these cases to national jurisdictions for trial. However, four of them are earmarked for trial at the Tribunal because of the leadership roles played by the Accused during the 1994 genocide (Félicien Kabuga, Protais Mpiranya, Augustin Bizimana and Idelphonse Nizeyimana).[10] Their possible arrest and transfer to the Tribunal would require a reassessment of the Tribunal's judicial calendar. The Security Council will be promptly informed of any new development in the matter.

47. The Prosecutor has accepted the Rwandan government's exercise of concurrent jurisdiction in the prosecution of four senior military officers for war crimes, without prejudice to the primacy of the ICTR jurisdiction over these crimes. The Prosecutor set up a monitoring mechanism for the trial to

[10] Augustin Bizimana, former Minister of Defence; Félicien Kabuga, Businessman and Financier of RTLM and the *interahamwe* militia; Major Protais Mpiranya, former Commander of the Presidential Guard; Captain Idelphonse Nizeyimana, former head of military intelligence and operations at ESO.

ensure its effective, expeditious, fair and public conduct. The judgment, delivered by a Rwandan Military Court on 24 October 2008, acquitted two generals and convicted two captains.

48. In addition to new trials and referrals of cases (see below), the work of the Office of the Prosecutor focuses on the increasing workload of its Appeals and Legal Advisory Division that will take up the applications and appeals from the several judgements expected to be delivered in 2008 and 2009.

## D. Referrals

49. Following the Tribunal's mandate, as set out in its Statute and Security Council Resolutions 1503 (2003) and 1534 (2004), the judicial activity of the Tribunal is focused on those individuals who allegedly were in positions of leadership, and those who allegedly bear the greatest responsibility for the genocide. As pointed out in earlier reports, the assessment of the Prosecutor as to whether an individual falls under this category is determined by a variety of factors, including the alleged status and extent of the participation in the genocide and evidence available, the possible connection with other cases, the relevant geographical areas, the availability of evidence with regard to the individual concerned and the ability of a State to deal with the case nationally. If such States willing to prosecute the alleged perpetrators exist, the Prosecutor will consider a referral request under Rule 11 *bis* of the Rules of Procedure and Evidence, after verifying whether the Accused would receive a fair trial if the case were to be referred and the death penalty would not be imposed.

50. In view of the fact that the Completion Strategy of the ICTR rests significantly on the referral of some of the cases to national jurisdictions, the Prosecutor continues to hold discussions with various States. The difficulties in finding adequate national jurisdictions for handling cases, such as strained judicial systems or lack of cooperation agreements, have been highlighted in the last report.

51. As mentioned earlier, of the five requests for referral of cases to Rwanda brought before the Trial Chambers, three have been denied by the Chambers, and two of those Trial Chamber decisions have been confirmed on appeal. The Appeals Chamber in its decisions of 9 and 30 October 2008 in the *Munyakazi* and *Kanyarukiga* cases agreed with the Trial Chambers' concerns relating to the ambiguity about the applicable Rwandan law concerning the risk of solitary confinement, and the availability and protection of witnesses from both within and outside Rwanda. The decisions will probably have an impact on the remaining Trial Chambers' decisions as well as the forthcoming Appeals Chamber's decision, all of which concern the same referral State. In the meantime, on 3 November 2008, Rwanda has passed an amendment to the law excepting transferees from the ICTR and other States from the provisions of solitary confinement upon conviction. The Prosecutor is analysing the decisions of the Appeals Chamber as well as the new Rwandan legal framework and will draw the necessary conclusions with regard to current and future requests for referral under Rule 11 *bis*.

## E. Cooperation between States and the Tribunal

52. The Tribunal depends on the continued assistance of Member States to accomplish its mandate. Cooperation is required in many aspects, including arrests of fugitives, possible transfer of cases, enforcement of sentences and relocation of acquitted persons and persons who have served their sentence.

53. The arrest of the 13 remaining fugitives remains a core element of the Tribunal's mandate to bring justice, peace and reconciliation to Rwanda and the Great Lakes region. These arrests cannot be achieved without the full cooperation of States. The Prosecutor continues to undertake diplomatic missions to several States with a view to securing their political support and cooperation for the arrest and transfer of the remaining fugitives.

54. At present, the Tribunal has signed Agreements with seven States on the enforcement of sentences. On 3 November 2008, the President signed decisions for the transfer of nine convicts for the enforcement of their sentences to one of those States[11]. Transfer decisions for further detainees will be signed within the near future.

55. Cooperation between the Office of the Registrar and a State has been successful in providing for a place of relocation for one acquitted person, and efforts continue to be made in order to find a host country for the other acquitted who remains at present in Arusha.

56. Consistent with its mandate and obligation to fight the culture of impunity, the Office of the Prosecutor will be hosting a forum in November 2008 for selected national prosecution authorities, regional courts and representatives of important civil society stakeholders to discuss ways of enhancing cooperation. As part of the continuing consultative process, early next year the Office of the Prosecutor will host the 5th Annual Colloquium for International Prosecutors which will focus on the challenges of completion and the proper closure of the *ad hoc* tribunals.

## F. Outreach and Capacity-Building

57. The Tribunal has continued its work to improve awareness of the achievements and the work of the ICTR through its outreach programme. During the reporting period, the Tribunal conducted awareness-raising workshops, specifically targeting Rwandans living in rural areas and youths in secondary and higher institutions of learning across the country. Rwandan students and teachers were provided with information about the activities of the Tribunal and its contribution to the justice and reconciliation process in the country.

58. The Rwandan judicial sector is the focus of the capacity building programs initiated by ICTR. A strengthened judicial sector can assist the Tribunal in implementing the Completion Strategy by enabling the future transfer of cases. The Tribunal has continued in 2008 and intends to continue in 2009 its training work for Rwandan judges, prosecutors and court staff, including training sessions in

[11] The name of the Member State is being kept confidential until the transfer procedures have been completed.

international criminal law, adversarial criminal procedures and court information management. Beyond Rwanda, the Tribunal continues to share with other countries in Africa the wealth of knowledge and systems built over the years in the wider areas of rule of law, governance and administration of justice.

59. Furthermore, the ICTR Library has contributed to strengthening the judicial and academic sectors through its training sessions in regard to a variety of themes including online research methods and library/information management. To date, more than 450 participants have been trained including Judges, Bar Association and prosecution lawyers, law students and library students.

60. As in previous years, the Tribunal would like to express its gratitude to the European Commission for its contributions over many years to the Tribunal's Voluntary Trust Fund for capacity-building activities, as well as for the individual support of Member States. With the end of the Tribunal's mandate approaching, time is pressing to complete ongoing projects and to conduct new projects which are considered essential. Therefore, further contributions from States are encouraged to support this task which is crucial to the Tribunal's mandate.

## G. Legacy and Residual Issues

61. The Tribunal continues to actively prepare for the period after the completion of its mandate and works on ensuring its legacy. In coordination with the International Criminal Tribunal for Former Yugoslavia ("ICTY"), consultations and discussions are undertaken with various organs and stakeholders, including the Office of Legal Affairs.

62. Residual issues were also the focus of a visit of representatives of the Security Council to the Tribunal in September 2008 when the visitors could receive a first-hand-impression of the daily work at the Tribunal and engage in discussions with representatives of all three organs of the Tribunal.

63. One of the most important issues on legacy is the preservation of the Tribunal's Archives which will help to ensure not only a lasting impact of the Tribunal's work, but also to prevent the crimes committed in Rwanda in 1994 from being forgotten or denied. Both ICTR and ICTY work closely together on this issue with the Office of Legal Affairs and the Department of Management. The Report of the Advisory Committee on the Archives ("ACA"), which has been prepared after wide consultations with all important stakeholders, including governments, victims groups and international and regional organizations, is currently being finalized by both Tribunals. On the basis of the final report, recommendations will be made to the Security Council for its consideration.

64. The Legal Library and Reference Section has embarked upon the compilation of a comprehensive full-text searchable ICTR Basic Documents and Case Law project that is available in CD-ROM, DVD and web (www.ictrcaselaw.org) formats. The variety of formats addresses the digital divide and ensures accessibility to the ICTR case law regardless of information technology and internet connectivity status.

## CONCLUSION AND UPDATED PROGNOSIS REGARDING THE IMPLEMENTATION OF THE COMPLETION STRATEGY

65. This report reveals that the Tribunal is in a difficult phase. Its current and upcoming workload is exceptionally high, and recent developments show that this workload will probably increase much more than expected in 2009, in particular due to the denied referral of cases to Rwanda, which will probably add up to four additional cases. The Tribunal remains strongly committed to the goal of completing first instance trials within its now extended mandate, i.e. until end of 2009. Whether this goal can be ultimately achieved, will depend, however, on the final number of new cases that will be tried before the Tribunal next year.

66. As mentioned above, one judgement has been delivered (*Nchamihigo*) and five judgements involving eight accused are expected within the next months (*Bikindi*, *Military I*, *Renzaho*, *Rukundo* and *Zigiranyirazo*). Closing arguments in the *Bizimungu et al.* case will be heard in December 2008, the closing arguments in the *Nsengimana* case will follow soon. Also before the end of 2008, the evidence phase of the longest-running trial involving the largest number of accused (*Butare*), as well as the evidentiary phase of the *Military II* case, involving four co-accused, will be completed. As previously indicated, the evidence phase in the *Karemera et al.* case will spill into 2009. The evidence phase in two other single-accused cases, *Kalimanzira* and *Setako*, will also run into the first half of 2009, due to particular circumstances explained above. The single-accused case of *Nshogoza* will start at the beginning of 2009. Following the recent transfer to the Tribunal of three arrested persons (Nzabonimana, Ntawukulilyayo and Ngibaratware) and taking into account Trial Chambers' occupancy rate, their cases are now also scheduled to commence in the first half of 2009. Also in the first half of 2009, the *Bagaragaza* case will start. All in all, the Tribunal anticipates that it will be writing judgements and conducting trials in at least 12 cases involving 25 accused in 2009.

67. The exceptionally high workload facing the Tribunal in 2009 will require the continued service of our competent and dedicated judges and staff. The goals of the Completion Strategy can only be achieved if adequate resources are provided.

68. A workload of this magnitude requires best efforts to further improve the management of trials and to build on the tools that have already been created for this purpose. The management of cases will be vastly different next year: The fact, that there is already a satisfactory factual record that is judicially verified, will enable the Prosecution to concentrate on establishing the essential elements of the crimes charged in the indictments. As a result, the duration of the prosecution case in each of the new trials will be appreciably briefer. The employment of principles of differentiated case management and reorganisation of resource deployment in Chambers will further support effective judicial management, while maintaining the strict requirements of fair adjudicative processes.

69. The referral of cases to national jurisdictions has been from the beginning an essential element of the Completion Strategy. The recent decisions of the Appeal Chamber confirming the denial of the referral of the cases of *Munyakazi* and *Kanyarugika* to Rwanda, could have a significant impact on this strategy. In view of the remaining pending requests for referrals to Rwanda, this could mean, ultimately, that up to four additional new trials would need to be held at the Tribunal. Current

projections already establish a contingency plan for this potential line of events. Further adjustments will be required, however, depending on the concrete number of new cases.

70. The continued support of the Member States remains indispensable for the Tribunal to achieve its mandate, for cooperation in regard to arrests, transfers, referrals and enforcement of sentences, and for ensuring that adequate resources enable the Tribunal to pursue the completion goals successfully.

## ANNEX 1 (A)

## STATUS OF JUDGEMENTS DELIVERED, AS OF 3 NOVEMBER 2008: 37 ACCUSED IN 31 JUDGEMENTS

| Case No. | Name | Former Title | Initial appearance | TC | Judgement |
|---|---|---|---|---|---|
| 1 | J. P. Akayesu | Bourgmestre of Taba | 30 May 1996 | TC1 | 2 September 1998 |
| 2 | J. Kambanda | Prime Minister | 1 May 1998 | TC1 | 4 September 1998 (guilty plea) |
| 3 | O. Serushago | Businessman, Interahamwe leader | 14 December 1998 | TC1 | 5 February 1999 (guilty plea) |
| 4 | C. Kayishema | Prefect of Kibuye | 31 May 1996 | TC2 | 21 May 1999 (joinder) |
| | O. Ruzindana | Businessman | 29 October 1996 | | |
| 5 | G. Rutaganda | Businessman, 2nd Vice-president of Interahamwe | 30 May 1996 | TC1 | 6 December 1999 |
| 6 | A. Musema | Businessman | 18 November 1997 | TC1 | 27 January 2000 |
| 7 | G. Ruggiu | RTLM Journalist | 24 October 1997 | TC1 | 1 June 2000 (guilty plea) |
| 8 | I. Bagilishema | Bourgmestre of Mabanza | 1 April 1999 | TC1 | 7 June 2001 |
| 9 | G. Ntakirutimana | Doctor | 2 December 1996 | TC1 | 21 February 2003 (joinder) |
| | E. Ntakirutimana | Pastor | 31 March 2000 | | |
| 10 | L. Semanza | Bourgmestre of Bicumbi | 16 February 1998 | TC3 | 15 May 2003 |
| 11 | E. Niyitegeka | Minister of Information | 15 April 1999 | TC1 | 15 May 2003 |
| 12 | J. Kajelijeli | Bourgmestre of Rukingo | 19 April 1999 | TC2 | 1 December 2003 |
| 13 | F. Nahimana | RTLM Director | 19 February 1997 | TC1 | "*Media* Case" (joinder) 3 December 2003 |
| | H. Ngeze | Kangura Editor | 19 November 1997 | | |
| | J.-B. Barayagwiza | Director, Ministry of Foreign Affairs | 23 February 1998 | | |
| 14 | J. Kamuhanda | Minister of Culture and Education | 24 March 2000 | TC2 | 22 January 2004 |
| 15 | A. Ntagerura | Minister of Transport | 20 February 1997 | TC3 | "*Cyangugu* Case" (joinder) 25 February 2004 |
| | E. Bagambiki | Prefect of Cyangugu | 19 April 1999 | | |
| | S. Imanishimwe | Lieutenant in FAR | 27 November 1997 | | |
| 16 | S. Gacumbitsi | Bourgmestre of Rusumo | 20 June 2001 | TC3 | 17 June 2004 |
| 17 | E. Ndindabahizi | Minister of Finance | 19 October 2001 | TC1 | 15 July 2004 |
| 18 | V. Rutaganira | Councillor of Mubuga | 26 March 2002 | TC3 | 14 March 2005 (guilty plea) |
| 19 | M. Muhimana | Councillor of Gishyita | 24 November 1999 | TC3 | 28 April 2005 |

| | | | | | |
|---|---|---|---|---|---|
| 20 | A. Simba | Lieutenant-Colonel in FAR | 18 March 2002 | TC1 | 13 December 2005 |
| 21 | P. Bisengimana | Bourgmestre of Gikoro | 18 March 2002 | TC2 | 13 April 2006 (guilty plea) |
| 22 | J. Serugendo | Technical Director, RTLM | 30 September 2005 | TC1 | 12 June 2006 (guilty plea) |
| 23 | J. Mpambara | Bourgmestre of Rukara | 8 August 2001 | TC1 | 12 September 2006 |
| 24 | T. Muvunyi | Commander, Ecole Sous-officiers | 8 November 2000 | TC2 | 12 September 2006 |
| 25 | A. Rwamakuba | Minister of Education | 7 April 1999 | TC3 | 20 September 2006 |
| 26 | A. Seromba | Priest, Kivumu Commune | 8 February 2002 | TC3 | 13 December 2006 |
| 27 | J. Nzabirinda | Youth organizer | 27 March 2002 | TC2 | 23 February 2007 (guilty plea) |
| 28 | J. Rugambarara | Bourgmestre of Bicumbi | 15 August 2003 | TC2 | 16 November 2007 (guilty plea) |
| 29 | GAA | Witness before ICTR proceedings | 10 August 2007 | TC3 | 4 December 2007 (contempt of Tribunal) |
| 30 | F. Karera | Prefect of Kigali | 26 October 2001 | TC1 | 7 December 2007 |
| 31 | S. Nchamihigo | Deputy Prosecutor of Cyangugu | 29 June 2001 | TC3 | 24 September 2008 |

## ANNEX 1 (B)

## CASES WHERE JUDGEMENT DELIVERY IS AWAITED: 8 ACCUSED IN 5 CASES

| Case No. | Name | Former Title | Initial appearance | TC | Judgement |
|---|---|---|---|---|---|
| 31 | T. Bagosora | Dir. of Cabinet, Ministry of Defence | 20 February 1997 | TC1 | "*Military I* Case" (joinder). Started on 2 April 2002. Closing arguments from 28 May to 1 June 2007. Judgement scheduled for 18 December 2008. |
| | G. Kabiligi | Brigadier-General in FAR | 17 February 1998 | | |
| | A. Ntabakuze | FAR Battalion Commander | 24 October 1997 | | |
| | A. Nsengiyumva | Lieutenant-Colonel in FAR | 19 February 1997 | | |
| 32 | T. Renzaho | Prefect of Kigali | 21 November 2002 | TC1 | Started on 8 January 2007. Closing arguments on 14 and 15 February 2008. Judgement expected soon. |
| 33 | E. Rukundo | Chaplain | 26 September 2001 | TC2 | Started on 15 November 2006. Closing arguments on 20 February 2008. Judgement expected soon. |
| 34 | S. Bikindi | Musician | 4 April 2002 | TC3 | Started on 18 September 2006. Closing arguments on 28 and 29 May 2008. Judgement scheduled for 2 December 2008. |

| | | | | | |
|---|---|---|---|---|---|
| 35 | P. Zigiranyirazo | Businessman | 10 October 2001 | TC3 | Started on 3 October 2005. Closing arguments on 26 and 27 May 2008. Judgement scheduled for 18 December 2008. |

## ANNEX 1 (C)

## CASES WHERE TRIAL IS CLOSED BUT CLOSING ARGUMENTS ARE YET TO BE HEARD: 5 ACCUSED IN 2 CASES

| | | | | | |
|---|---|---|---|---|---|
| 1 | H. Nsengimana | Rector, Christ-Roi College | 16 April 2002 | TC1 | Started on 22 June 2007. Completion in September 2008. Judgement expected in 2009. |
| 2 | C. Bizimungu | Minister of Health | 3 September 1999 | TC2 | "*Bizimungu et al.* case" (joinder). Started on 5 November 2003. Completion in June 2008. Judgement expected in 2009. |
| | J. Mugenzi | Minister of Commerce | 17 August 1999 | | |
| | J. Bicamumpaka | Minister of Foreign Affairs | 17 August 1999 | | |
| | P. Mugiraneza | Minister of Civil Service | 17 August 1999 | | |

## ANNEX 1 (D)

## ON-GOING TRIALS: 15 ACCUSED IN 5 CASES

| | Name | Former Title | Initial Appearance | TC | Comments |
|---|---|---|---|---|---|
| 1 | P. Nyiramasuhuko | Minister of Family and Women's Affairs | 3 September 1997 | TC2 | "*Butare* case" (joinder). Started on 12 June 2001. Completion in 2008. Judgement expected in 2009. |
| | A. S. Ntahobali | Interahamwe leader | 17 October 1997 | | |
| | S. Nsabimana | Prefect of Butare | 24 October 1997 | | |
| | A. Nteziryayo | Prefect of Butare | 17 August 1998 | | |
| | J. Kanyabashi | Bourgmestre of Ngoma | 29 November 1996 | | |
| | E. Ndayambaje | Bourgmestre of Muganza | 29 November 1996 | | |
| 2 | A. Ndindilyimana | Chief of Staff of Gendarmerie | 27 April 2000 | TC2 | "*Military II* case" (joinder). Started on 20 September 2004. Completion in 2008. Judgement expected in 2009. |
| | F-X Nzuwonemeye | FAR Battalion Commander | 25 May 2000 | | |
| | I. Sagahutu | 2IC of Reconn. Battalion | 28 November 2000 | | |
| | A. Bizimungu | Chief of Staff of FAR | 21 August 2002 | | |

| | | | | | |
|---|---|---|---|---|---|
| 3 | E. Karemera | Minister of Interior, V-P of MRND | 7 April 1999 | TC3 | "*Karemera et al.* case" (joinder). Started on 27 November 2003. Started *de novo* on 19 September 2005. Completion and Judgement expected in 2009. |
| | M. Ngirumpatse | D-G of Ministry of Foreign Affairs, President of MRND | 7 April 1999 | | |
| | J. Nzirorera | President of National Assembly, S-G of MRND | 7 April 1999 | | |
| 4 | C. Kalimanzira | Acting Minister of Interior | 14 November 2005 | TC3 | Started 30 April 2008. Completion in 2008. Judgement expected in 2009. |
| 5 | E. Setako | Colonel | 22 November 2004 | TC1 | Started 25 August 2008. Completion and judgement expected in 2009. |

## ANNEX 2

## AWAITING TRIAL: 5 ACCUSED WHOSE CASES WILL COMMENCE SHORTLY

| Name | Former Title | Initial Appearance | TC | Likely Start Date |
|---|---|---|---|---|
| M. Bagaragaza | Director General of Tea Factory | 16 August 2005 | TC 2 | Early 2009 |
| A. Ngirabatware | Minister in the Interim Government | 10 October 2008 | TC 2 | First half 2009 |
| D. Ntawukulilyayo | *Sous-Préfet* of Butare *Préfecture* | 10 June 2008 | TC 3 | First half 2009 |
| C. Nzabonimana | Minister of Youth in the Interim Government | 20 February 2008 | TC 1 | First half 2009 |
| L. Nshogoza | Former Defence Investigator (Contempt of Court Case) | 11 February 2008 | TC2 | February 2009 |

## ANNEX 3

## RETRIAL

| Name | Former Title | Appeals Judgement | TC | Likely Start Date |
|---|---|---|---|---|
| T. Muvunyi | Interim Commander, ESO Camp | 28 August 2008 | tbc | Early 2009 |

## ANNEX 4

## FOUR DETAINEES AND ONE FUGITIVE FOR WHOM REFERRAL OF THE CASE HAS BEEN REQUESTED

| Name | Former Title | Initial Appearance | Referral Chamber | Decision |
|---|---|---|---|---|
| I. Hategekimana | Lieutenant, Commander of Ngoma Camp, Butare | 28 February 2003 | TC3 | Request denied; 19 June 2008 |
| G. Kanyarukiga | Businessman | 22 July 2004 | TC1 | Request denied, 6 June 2008; denial confirmed on appeal, 30 October 2008 |
| J.-B. Gatete | Bourgmestre of Murambi | 20 September 2002 | TC1 | |
| F. Kayishema | Inspector of police | Fugitive | TC3 | |
| Y. Munyakazi | Interahamwe leader | 12 May 2004 | TC3 | Request denied; 28 May 2008; denial confirmed on appeal, 8 October 2008 |

## ANNEX 5

## 13 FUGITIVES

| | |
|---|---|
| Augustin Bizimana | Idelphonse Nizeyimana |
| Felicien Kabuga | Ladislas Ntaganzwa |
| Fulgence Kayishema | Charles Ryandikayo |
| Protais Mpiranya | Charles Sikubwabo |
| Bernard Munyagishari | Jean Bosco Uwinkindi |
| Gregoire Ndahimana | Pheneas Munyarugarama |
| Aloys Ndimbati | |

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**General Assembly**
**Sixty-third session**
Agenda item 13
**Protracted conflicts in the GUAM area and their implications for international peace, security and development**

**Security Council**
**Sixty-third year**

## Identical letters dated 20 November 2008 from the Permanent Representative of Georgia to the United Nations addressed to the Secretary-General and the President of the Security Council

I have the honour to transmit the Law of Georgia on the Occupied Territories.*

I should be grateful if the present letter would be circulated as a document of the sixty-third session of the General Assembly, under agenda item 13, and of the Security Council.

(*Signed*) Irakli **Alasania**
Permanent Representative

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* The text of the law is on file with the Secretariat and is available for consultation.

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United Nations S/2008/728

Security Council

Distr.: General
21 November 2008

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# Fourth special report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo

## I. Introduction

1. The present report is submitted pursuant to resolution 1794 (2007), by which the Security Council extended the mandate of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) until 31 December 2008 and requested me to report regularly on major developments in that country. In its presidential statement of 21 October 2008 (S/PRST/2008/38), the Council took note of the request of my Special Representative for additional resources for MONUC and requested me to present a full analysis of the situation and recommendations. The report covers major developments in the Democratic Republic of the Congo since my report of 3 July 2008 (S/2008/433), to 18 November 2008. It also reviews the implementation of the Mission's mandate pursuant to resolution 1794 (2007) and contains recommendations on the configuration of the Mission and the additional resources it requires in order to effectively carry out its mandate.

## II. Major developments

2. Efforts to stabilize the eastern region of the Democratic Republic of the Congo witnessed significant setbacks during the reporting period. The processes relating to the Goma statements of commitment (actes d'engagement) and the Nairobi communiqué stalled, and large-scale hostilities between the Armed Forces of the Democratic Republic of the Congo (FARDC) and the Congrès national pour la défense du peuple (CNDP), led by Laurent Nkunda, resumed on 28 August. The fighting, which spread throughout North Kivu, has further exacerbated the humanitarian crisis, displacing over 250,000 people and bringing the number of internally displaced persons in the eastern part of the country to more than 1.35 million. Exchanges of fire across the border between Rwanda and the Democratic Republic of the Congo, as well as a resurgence of armed groups in Ituri and a resumption of atrocities committed by the Lord's Resistance Army (LRA), further compounded the crisis in the area. While the security situation remained stable elsewhere in the Democratic Republic of the Congo, little progress was achieved in the key peace consolidation tasks, including the delivery of basic

services and the extension of State authority. Preparations for local elections continued, but key legislation, without which the necessary preparatory work cannot proceed, has yet to be adopted, risking further delays in the conduct of the elections.

**North Kivu crisis**

3. In June, CNDP, together with the Forces républicaines fédéralistes (FRF), withdrew from the mixed technical commission on peace and security, which had been set up under the Amani programme. CNDP indicated that its demands were not being addressed, including guarantees for the protection of the Tutsi community once the CNDP forces had been dismantled; the security of CNDP soldiers going into *brassage*; and the safe return of refugees from Rwanda, Burundi and the United Republic of Tanzania. CNDP continued to consolidate its hold in areas under its occupation, including by establishing a parallel police force and civil administration, including a de facto customs service at Bunagana, near the border with Uganda. In July, CNDP elements moved closer to FARDC positions, leading to several skirmishes, particularly around Rutshuru and Sake.

4. Following extensive MONUC contacts with CNDP, an agreement was reached on 27 August to resume meetings of the mixed technical commission on 28 August to address CNDP grievances. However, large-scale hostilities erupted unexpectedly on 28 August around Rumangabo and Rugari, some 40 km north of Goma, and further west in Katsiru and Kikuku, in Rutshuru territory. Although it is unclear who initiated the hostilities, MONUC investigations confirmed that CNDP troops subsequently began moving north, from Nyanzale towards Rwindi and Kanyabayonga, and east, from the Katsiru area through Bambo and towards Kirumba, to block the main Kanyabayonga-Rutshuru axis. Fighting also briefly spread to South Kivu, where CNDP forces attacked FARDC positions south-west of Minova, but were repelled by FARDC.

5. On 11 September, the International Facilitation formally requested MONUC to propose a comprehensive disengagement plan to the parties. MONUC presented the disengagement plan to the President of the Democratic Republic of the Congo, Joseph Kabila, and it was endorsed by the Government on 18 September. The plan was subsequently accepted by all armed groups with the exception of CNDP, which demanded direct talks with the Government outside the framework of the Amani programme.

6. The disengagement plan proposed by MONUC comprised three phases: immediate ceasefire and separation of forces, followed by the disarmament and demobilization of combatants and their integration into FARDC or their return to civilian life. The disengagement plan covered all armed groups, including the Forces démocratiques de libération du Rwanda (FDLR), and provided for the garrisoning of FARDC concomitantly with the regrouping of the armed groups and the progressive deployment of the Congolese National Police to maintain law and order in the area.

7. Under the disengagement plan, the separation of forces started near Sake, in the Masisi area, on 19 and 21 September. MONUC held intensive consultations at the command and ground levels to convince each side to withdraw from the positions occupied in the new zones of separation. However, CNDP advances around Sake on 20 and 21 September resulted in renewed clashes. MONUC supported FARDC in pushing CNDP back to its pre-28 August positions. By the middle of October, the armed forces had succeeded in recapturing Ntamugenga and

had captured Tongo, which had been in CNDP-controlled territory. At the same time, CNDP launched attacks on FARDC positions along the Goma-Rutshuru axis and captured the military camp of Rumangabo. MONUC applied immediate pressure on both sides, after which FARDC pulled back from Tongo, and CNDP withdrew, temporarily, from Rumangabo.

8. In a statement issued on 2 October, Laurent Nkunda called for the "liberation" of the Congo, which further heightened anxieties, and was condemned by the international community, national actors and the population. In subsequent statements and letters addressed to my Special Representative and others, CNDP continued to challenge the legitimacy of the elected Congolese institutions, which it accused of mismanagement, collusion with "genocidal foreign forces" and failing to protect Congolese populations. At the same time, CNDP continued to call upon the International Facilitation and MONUC to facilitate direct talks with the Government outside the framework of the Amani programme. CNDP continued to demand that the Government take strong action against foreign armed groups in the Democratic Republic of the Congo, and requested greater federalism, as well as greater transparency, in the awarding of mining contracts.

9. On 4 October, the Minister for Foreign Affairs of the Democratic Republic of the Congo expressed concern to MONUC and diplomatic representatives in Kinshasa about alleged Rwandan support for CNDP and the reinforcement of its military presence along the border with North Kivu. On 9 October, the Permanent Representative of the Democratic Republic of the Congo to the United Nations sent a letter to the Security Council in which he claimed that Rwandan forces had launched an offensive on Rumangabo on 8 October in the territory of the Democratic Republic of the Congo (S/2008/641). The Government of Rwanda denied the accusations, but deployed troops on the Rwandan side of the border, asserting that it was a protective measure. Following a request from the Government of the Democratic Republic of the Congo, MONUC began efforts to revive the joint verification mechanism between the Democratic Republic of the Congo and Rwanda to investigate those allegations.

10. In a major offensive operation that started on 26 October, CNDP recaptured the FARDC camp at Rumangabo and took control of Rugari, Kalengera, Burare, Rutshuru and the main road between Goma and Rutshuru. CNDP advanced to within a few kilometres of Goma before declaring a unilateral ceasefire on 29 October. The ceasefire remained in place until 4 November, when the coalition of Congolese Patriotic Resistance (PARECO) and Mayi-Mayi militia launched an attack against CNDP at Kiwanja, north of Rutshuru. CNDP captured Kiwanja, following intense fighting on 4 and 5 November. In a further escalation, on 6 November CNDP forces attacked FARDC at Nyanzale. Additional clashes were reported on 7 November at the camp for internally displaced persons in Kibati.

11. On 7 November, MONUC dispatched a multidisciplinary assessment mission to Kiwanja to conduct a preliminary investigation of the reported killing of civilians during the fighting. On the basis of its initial assessment, the Mission ascertained that a number of people had been killed during the crossfire between CNDP and PARECO/Mayi-Mayi. Indications also suggest that, following the withdrawal of PARECO/Mayi-Mayi, many more civilians were killed when CNDP took control of Kiwanja. MONUC has launched a more in-depth investigation into the matter, and on 14 November, a small team, including human rights, civil affairs and child

protection officers was dispatched to Kiwanja to support the Mission's efforts to protect civilians there.

12. On 9 and 10 November, fighting between CNDP and mixed PARECO/Mayi-Mayi and, possibly, FDLR elements was reported at Ngungu in Masisi territory. On 11 November, clashes between CNDP and FARDC occurred in and around Kibati, north of Goma. On 11 November, fighting between FARDC and CNDP began further north, in Rutshuru territory, with CNDP seeking to take control of the strategic town of Kanyabayonga and surrounding areas, including Kibirizi, Rwindi, Kabasha and Ndeko. Fighting continued until the time of reporting, with CNDP forces succeeding in gaining control of Ndeko and Rwindi.

13. Throughout the fighting during the period from August to November, MONUC, in accordance with its mandate, supported the efforts of the armed forces to repel CNDP offensives and sought to secure major population centres and axes. However, in the face of the major CNDP offensive, FARDC abandoned positions held jointly with MONUC. In addition, MONUC was directly targeted by retreating FARDC elements in Ntamugenga and Rwindi on 27 and 28 October, and in the Kanyabayonga area on 12 and 13 November. Retreating rogue elements of FARDC were also responsible for causing major insecurity within Goma following the unilateral ceasefire declaration of CNDP. MONUC began to reinforce its military presence in Goma and the surrounding area with additional military capabilities in order to protect civilians.

14. In view of the gravity of the situation, on 28 October, President Kabila appealed to diplomatic representatives based in Kinshasa, requesting that their Governments consider the urgent deployment of a multinational force to North Kivu. On the same day, President Kabila's Special Envoy for the Great Lakes Region and Minister for Foreign Affairs-designate met with the President of Rwanda, Paul Kagame, in Kigali. On 30 October, the Minister for Foreign Affairs of Rwanda met with President Kabila and the Minister for Foreign Affairs of the Democratic Republic of the Congo in Kinshasa. That exchange resulted in the establishment of a bilateral mechanism aimed at normalizing relations between the neighbouring countries. Subsequently, two additional meetings between the Ministers for Foreign Affairs of the Democratic Republic of the Congo and Rwanda were held, on 1 November and on 14 and 15 November, in Kinshasa and Kigali, respectively.

15. In response to the intensification of the crisis, a series of initiatives were undertaken to seek an immediate ceasefire, the disengagement of forces and a resumption of the political process. In Kinshasa on 29 October, the National Assembly adopted a plan for a comprehensive solution to the crisis, which was submitted for President Kabila's consideration. The plan called for dialogue with CNDP, the strengthening of FARDC and increased investment in the Kivus.

16. Together with international partners, the United Nations has undertaken intensive political efforts to arrest the deterioration of the situation in the eastern part of the Democratic Republic of the Congo. I have maintained close contacts with Presidents Kabila and Kagame, as well as with other regional and international leaders, with a view to discussing ways of facilitating an immediate end to the hostilities and arriving at lasting solutions to the threat posed by illegal armed groups in the eastern part of the country. On 31 October, the Assistant Secretary-General for Peacekeeping Operations, Edmond Mulet, and my Special

Representative for the Democratic Republic of the Congo, Alan Doss, together with the Assistant Secretary of State for African Affairs of the United States of America, Jendayi Frazer, and diplomatic representatives based in Kinshasa, visited Goma to assess the situation on the ground and look into ways of resolving the humanitarian and security crisis. On 1 November, the Ministers for Foreign Affairs of France and the United Kingdom of Great Britain and Northern Ireland travelled to the Democratic Republic of the Congo and the region to pursue the same goal. At my request, the Under-Secretary-General for Peacekeeping Operations, Alain Le Roy, travelled to the Democratic Republic of the Congo and Rwanda early in November, where he met with Presidents Kabila and Kagame and reviewed the capacity of MONUC to carry out its mandate. The Assistant Secretary-General for Political Affairs, Haile Menkerios, also visited the region during that period and met with Presidents Kabila and Kagame. On 3 November, I appointed the former President of Nigeria, Olusegun Obasanjo, as my Special Envoy for the Great Lakes Region. I had initially designated him as my Special Envoy for eastern Democratic Republic of the Congo, but changed his title after my consultations with the parties and regional leaders in Nairobi. As originally requested, he will focus on addressing the challenges to peace and security posed by the continued presence and activities of illegal armed groups in the eastern part of the country and on building confidence between the Democratic Republic of the Congo and its neighbours.

17. On 7 November, I travelled to Nairobi to participate in a regional summit on the situation in the eastern part of the Democratic Republic of the Congo, convened under the auspices of the African Union and the International Conference on the Great Lakes Region. In the course of the summit, I met separately with the Presidents of the Democratic Republic of the Congo, Rwanda and the United Republic of Tanzania, as well as with the Chairperson of the African Union Commission and the Minister for Foreign Affairs of Angola. The summit started with closed consultations between the heads of State of Kenya, the Democratic Republic of the Congo, Rwanda and other neighbouring countries, as well as high-level representatives and envoys from the African Union, the European Union and Member States. I had the opportunity to introduce my newly appointed Special Envoy to the regional leaders.

18. In a joint statement, adopted on 7 November, participants in the summit called on all armed groups in North Kivu to observe an immediate ceasefire. They also decided to establish a mechanism to facilitate a comprehensive solution and help address the root causes of the crisis in the eastern part of the Democratic Republic of the Congo. The mechanism, chaired by the President of Kenya, Mwai Kibaki, will be composed of a team of facilitators, including my Special Envoy, President Obasanjo, and the former President of the United Republic of Tanzania, Benjamin Mkapa. The team will report to the Chairperson of the International Conference on the Great Lakes Region, the Chairperson of the African Union and the Secretary-General.

19. On 9 November, heads of State or Government of the Southern African Development Community (SADC) met at an Extraordinary Summit held in South Africa. The Summit, which was chaired by the President of South Africa, Kgalema Motlanthe, in his role as Chairperson of SADC, was attended by President Kabila as well as other representatives of members of the Community. The Summit endorsed the joint statement issued at the regional meeting in Nairobi, and resolved

to assist the Democratic Republic of the Congo, including by sending a regional peacekeeping force to North Kivu if necessary.

20. Immediately following the Nairobi regional summit, my Special Envoy began consultations with heads of State in the Great Lakes Region. From 14 to 16 November, he held initial discussions with the President of Angola, José Eduardo dos Santos, President Kabila and President Kagame. He was then joined in Nairobi on 17 November by President Mkapa, who has taken up his duties as co-facilitator, with Special Envoy Obasanjo, on behalf of the International Conference on the Great Lakes Region. Together, they met with the Chairperson of the Conference, President Kibaki. In his consultations with regional leaders, my Special Envoy encountered the same level of renewed regional engagement on the crisis in the eastern part of the Democratic Republic of the Congo that was expressed at the Nairobi regional summit.

21. On 15 November, my Special Envoy travelled to Goma to assess the situation in North Kivu. On 16 November, he met with Laurent Nkunda, and insisted on the importance of an immediate return to a durable ceasefire, backed by an effective monitoring mechanism. He also secured Mr. Nkunda's agreement with respect to the recommendations of the Nairobi joint statement, including regarding his role as my Special Envoy and facilitator for the regional initiative, as well as Mr. Nkunda's recommitment to the principles of the Goma statements of commitment and the Nairobi communiqué. Following discussions with the Special Envoy, CNDP announced on 18 November that it was withdrawing its forces from the Kanyabayonga-Nyanzale and Kabasha-Kiwanja axes, and requested MONUC to deploy in those areas.

**FDLR**

22. The process of implementation of the 2007 Nairobi communiqué, which set out measures to be taken in order to address the continued presence of FDLR in the eastern part of the Democratic Republic of the Congo, has stalled. With the support of MONUC, the Government continued its sensitization efforts to encourage disarmament and repatriation to Rwanda, or temporary relocation of disarmed Rwandan combatants within the Democratic Republic of the Congo. While more than 1,100 combatants and dependants have been repatriated to Rwanda since the signing of the communiqué, the repatriation of FDLR elements has dropped significantly as a result of the deteriorating situation in the eastern part of the Democratic Republic of the Congo.

23. On 17 September, MONUC and FARDC approved a new plan of military operations against FDLR, targeting its sources of revenue, such as road barriers and mines under its control. FARDC had earmarked 10 of a total of 12 battalions trained by MONUC for that operation. MONUC and Congolese customs authorities have also started conducting random checks at airports and border posts, where it is suspected that minerals are being exported illegally by FDLR. It should be noted, however, that there continue to be allegations of military and economic collusion by FARDC with FDLR. With the resumption of hostilities, the Government of the Democratic Republic of the Congo redeployed the 10 battalions for operations against CNDP. Nevertheless, MONUC continued to conduct joint planning with FARDC for further training and deployment against FDLR.

**South Kivu**

24. In South Kivu, the signatories of the statements of commitment initially accepted the disengagement plan proposed by MONUC, which was presented at a meeting of the Amani steering committee in September. For South Kivu, the disengagement plan provided for the total demilitarization of the Hauts Plateaux, the main area of military activity in the province, and the deployment of the Congolese National Police in those areas. However, the implementation of the plan has been delayed, as the three main groups involved — FRF, and the Yakutumba and Zabuloni Mayi-Mayi — have since pulled out of the process for various reasons. Securing funding for the disarmament, demobilization and reintegration aspects of the disengagement plan also continued to present a challenge.

**Ituri and Haut Uélé**

25. In Ituri, MONUC supported FARDC Operation "Iron Stone", carried out in July against the Front de résistance patriotique d'Ituri (FRPI), which had perpetrated acts of violence and looting against the population in the area of Tchey. On 29 September, FRPI renewed its attacks on FARDC positions at Tchey, Quinz, Bulanzabo and Kodheza. MONUC used force in support of FARDC to deter FRPI advances, but in subsequent fighting, FRPI was able to hold its positions at several locations in Irumu territory and succeeded in blocking one of the main roads linking Ituri and North Kivu. However, by the end of October, FARDC, with the support of MONUC, was able to recapture several FRPI positions and had taken steps toward securing the Bunia-Beni and the Bunia-Mahagi/Aru axes. In addition, on 3 November FARDC and MONUC succeeded in recapturing FRPI headquarters at Tchey.

26. In another development, new Ituri militia groups emerged during the reporting period, including the Front pour la justice au Congo (FPJC), which attacked FARDC positions and looted several villages between the end of September and mid-October in Irumu territory. The resumption of fighting in Ituri has created insecurity and further population displacement. FARDC has performed better in Ituri than it has in North Kivu, generally retaking lost ground and gaining new territory.

27. Further north, in Haut Uélé Orientale province, the security situation deteriorated markedly following serious LRA attacks against Congolese civilians. Such attacks have been carried out in at least 10 locations north of Dungu since 17 September. A MONUC investigation conducted from 29 September to 10 October revealed that from 17 September to 4 October, LRA abducted some 177 Congolese children and killed an estimated 76 adults.

28. MONUC-supported FARDC operations against LRA entered their second phase during the reporting period. Although deployment was initially hampered by logistical limitations, FARDC, with MONUC support, rapidly moved three battalions of some 2,250 soldiers to Dungu following the increased LRA activities. In addition, MONUC has deployed 230 military personnel and 5 civilians to the forward operational base at Dungu. MONUC is providing logistical support, training and planning assistance to the FARDC-led operations aimed at containing and isolating the LRA in the Garamba Park area. On 31 October, clashes between LRA and FARDC 35 km north-east of Dungu reportedly left nine LRA members dead, following the killing of six FARDC soldiers by LRA in incidents during the preceding 10 days. Further clashes took place in Dungu on 1 and 2 November,

reportedly killing 21 LRA elements. MONUC continued to receive LRA elements reporting for voluntary disarmament and repatriation.

29. My Special Envoy for the Lord's Resistance Army-affected Areas, President Joaquim Chissano, and the Chief Mediator and Vice-President of the Government of Southern Sudan, Riek Machar Teny, visited the region from 4 to 9 November with a view to reaching agreement with the parties and other key stakeholders on a deadline for the signing of the final peace agreement. The Government of Uganda and LRA agreed that Joseph Kony would sign the final peace agreement on 29 November 2008 in Ri-Kwangba, southern Sudan. President Kabila and the First Vice-President of the Sudan, Salva Kiir Mayardit, were encouraged by the direct contact in Uganda between the leader of the LRA delegation and high-level officials of the Government of Uganda, and agreed to give Mr. Kony one last chance to sign the agreement.

**Security of United Nations personnel and facilities**

30. The resurgence of violence in the eastern part of the Democratic Republic of the Congo led to increased threats to United Nations staff throughout the country. United Nations and humanitarian staff had to be extracted from Rutshuru, Bunia and Dungu, and 15 United Nations vehicles were damaged during demonstrations in Goma, Bukavu and Bunia. A wide range of measures were taken by the United Nations to mitigate the risk to staff, including the issuance of security advisories; restrictions on staff movement, including travel to Goma, Bukavu and Dungu; improvements to the physical security of United Nations installations; increased patrolling by MONUC military and police; and the enforcement of a curfew in Goma.

**Human rights, sexual violence, child protection and the rule of law**

31. Despite some improvement in cooperation between MONUC and national authorities on human rights issues, the human rights situation in the Democratic Republic of the Congo remained a cause for grave concern. FARDC and national police elements were responsible for a large number of serious human rights violations during the reporting period, including arbitrary executions, rape, torture and other cruel, inhuman or degrading treatment. Congolese and foreign armed groups, in particular CNDP, PARECO, Mayi-Mayi Mongol, FDLR and LRA, also perpetrated serious human rights abuses with impunity, including mass killings, torture, abductions, the forced recruitment of children, forced displacement, the destruction of camps for internally displaced persons, forced labour and sexual slavery and other forms of sexual violence. Members of the national intelligence services, both civil and military, were implicated in politically motivated human rights violations, mainly arbitrary arrests and detention followed by torture and extortion. The national security forces, as well as political and administrative officials, targeted journalists and human rights defenders, who were subjected to threats, arbitrary arrest, detention and other forms of ill-treatment.

32. MONUC continued to provide human rights training to members of the security services as well as parliamentarians, journalists and civil society organizations. Through a project funded by the European Commission, MONUC established a national network of non-governmental human rights organizations

specializing in the protection of victims and witnesses and provided them with capacity-building training.

33. Child recruitment by armed groups increased during the reporting period. Mayi-Mayi groups accounted for the highest number of children recruited, followed by CNDP and FDLR. In North Kivu, accounts provided by children escaping the fighting between FARDC and CNDP indicate that they are used by CNDP on the front line.

34. According to the United Nations Population Fund, 6,693 new cases of sexual violence were recorded in the Democratic Republic of the Congo in the first half of 2008. In all, 65.5 per cent of the alleged perpetrators were civilians, while 32.7 percent were uniformed men. The majority of rapes committed by men in uniform (2,145 of the 3,209) occurred in North and South Kivu and in Ituri. 66 per cent of the victims were minors, a 10 per cent increase compared with 2007. Victims aged between 10 and 17 years constituted 55 per cent; while 10 per cent were under 10 years of age.

35. MONUC has taken steps to support efforts to combat sexual violence. Intervention, including in the areas of capacity-building, justice support and medical and psycho-social support and protection, was focused on North and South Kivu. It included the establishment of legal aid clinics for victims of sexual violence in five provinces, with assistance from the Governments of Belgium and Canada. The Ministry of Justice also adopted a road map, developed with the support of MONUC and United Nations partners, which, inter alia, establishes a standard medical certificate for victims of sexual violence.

36. MONUC also focused on improving the collection of data on sexual violence and developing a comprehensive strategy to combat such violence in consultation with United Nations agencies, international non-governmental organizations and the Government of the Democratic Republic of the Congo. The aim is to complete, adopt and begin implementing the strategy by the end of 2008. In the meantime, an initial mapping exercise has provided an inventory of existing and planned activities by international actors in the area of sexual violence, highlighting gaps in coordination among various sectors, which will be addressed as part of the comprehensive strategy.

37. MONUC also continued to sensitize national political actors and women's groups with the aim of promoting the inclusion of women in decision-making positions. Results included the appointment by the Governor of South Kivu of eight women to his Cabinet and secretariat in September; and the inclusion of seven women in the provincial structure of the Amani programme for South Kivu.

38. During the reporting period, MONUC assisted the permanent secretariat of the High Judicial Council in the creation of a national database of magistrates, based on the findings of a joint mission conducted earlier in the year. In addition, MONUC supported national officials in developing a model Tribunal de Paix that will be used for the development of judicial infrastructure. MONUC is also assisting the permanent secretariat in developing training curricula for all categories of judicial sector personnel.

39. The situation in prisons throughout the Democratic Republic of the Congo remained alarming, with prison overpopulation as high as 600 per cent of capacity. During July and August, more than 25 prisoners died of starvation. Only one prison

in the country benefits from funds budgeted for feeding detainees, and those funds amount to less than $0.01 per inmate per day. MONUC is working with partners to assist the authorities in finding sustainable solutions for the provision of food to detainees. Nevertheless, the absence of State budgeted funds is a serious concern. A new strategic plan has been jointly agreed between MONUC and the Ministry of Justice with a focus on prison reform and training.

**Humanitarian situation**

40. The overall humanitarian situation remained fragile during the reporting period, with vital health, nutrition and food security indicators still at emergency thresholds in many parts of the country. In the eastern part of the country, the resumption of fighting at the end of August resulted in a significant deterioration in the humanitarian situation. An estimated 250,000 people were displaced as a result of the fighting, the majority of whom sought refuge at camps, rather than with host families. Most of those forced to move had already fled fighting multiple times. Early in November, the humanitarian community estimated that nearly 70 per cent of the population of North Kivu was either displaced or hosting internally displaced persons.

41. In addition, the resumption of fighting in Ituri and the actions of LRA in Haut Uélé led to further large-scale displacements of the population in Orientale province. Initial estimates suggest that 22,000 fled their homes owing to fighting in Ituri, although local humanitarian organizations have indicated that the total number of displaced people could be much higher. The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) estimates that 1.35 million people are currently displaced in North and South Kivu and Ituri. Further north, LRA attacks on villages north of Dungu resulted in the displacement of approximately 26,000 people.

42. Since the beginning of 2008, 67 security incidents against United Nations and non-governmental humanitarian organizations have been reported in North Kivu, the majority of them perpetrated by armed elements and men in uniform. Those incidents included carjacking, illegal taxation, theft at gunpoint and confiscation of vehicles and relief items, all of which constitute violations of international humanitarian law. Systematic advocacy vis-à-vis Government authorities, the army and representatives of rebel groups by OCHA, United Nations agencies and MONUC had not led to a concrete improvement in humanitarian access or working conditions for humanitarian organizations at the time of reporting.

43. The 2008 Humanitarian Action Plan for the Democratic Republic of the Congo, for which $736 million is required, has received $502 million, or 68 per cent, of the total funding requested. Approximately 80 per cent of the funds available have been allocated to emergency programmes in the eastern part of the country. An additional $81.4 million is urgently needed to respond to the crisis in North Kivu. At the time of reporting, humanitarian organizations were finalizing the preparation of the 2009 Humanitarian Action Plan, which will include province-specific early-recovery strategies.

## III. MONUC mandate

44. The deficiencies of FARDC and the challenges encountered by an overstretched MONUC in efforts to address the renewed hostilities in the Kivus have opened a debate among many stakeholders about the Mission's mandate under Chapter VII of the Charter of the United Nations. During their discussions with the Under-Secretary-General for Peacekeeping Operations, Government officials called for the revision of the MONUC mandate to allow the Mission to conduct operations against illegal armed groups independently of FARDC. In addition, some Member States have questioned whether the Mission's mandate is sufficiently clear and robust to enable it to address the complex situation on the ground.

45. The Mission's Chapter VII mandate is spelled out in the relevant resolutions of the Security Council, in particular resolution 1756 (2007), by which the Council authorized MONUC to support operations led by FARDC in the eastern part of the Democratic Republic of the Congo to disarm recalcitrant local and foreign armed groups and prevent the provision of support to those groups, including support derived from illicit economic activities. In paragraph 3 of resolution 1804 (2008), the Council reaffirmed those aspects of the Mission's mandate.

46. At the same time, by its resolution 1756 (2007), the Security Council authorized MONUC to use all necessary means, within the limits of its capacity and in the areas where its units are deployed, to protect civilians and humanitarian workers under imminent threat of physical violence; to contribute to the improvement of the security conditions in which humanitarian assistance is provided; to protect United Nations personnel, facilities, installations and equipment; to ensure security and freedom of movement of United Nations and associated personnel; and to deter any attempt at the use of force to threaten the political process from any armed group, foreign or Congolese.

47. In my previous reports, I have provided updates on the actions taken by MONUC in implementing its Chapter VII mandate. During the current crisis, in order to protect civilians under imminent threat of physical violence, MONUC has, within its overstretched means, strengthened its presence in North Kivu and, to date, has prevented the fall of major population centres, including Goma, to CNDP. MONUC took offensive action against CNDP at the outset of the fighting to compel it to return to positions held on 28 August, giving clear warning that it would use all necessary means should CNDP threaten major population centres. The Mission also negotiated a series of disengagements at the local level. Given that there are 10 MONUC peacekeepers for every 10,000 civilians in North Kivu, MONUC has provided protection to tens of thousands of civilians through regular patrols and to those who have sought shelter around its mobile and company operating bases across North Kivu.

48. MONUC has continued to provide protection to humanitarian workers and escorted humanitarian convoys. Mission support has enabled humanitarian workers to deliver food and non-food assistance to some 135,000 people in the eastern part of the country since the resumption of fighting, and humanitarian operations are continuing. On 18 November, MONUC, in collaboration with United Nations partners, began work on clearing an area west of Goma for the relocation of approximately 50,000 internally displaced persons, away from the front lines in Kibati.

49. As noted in the present report, MONUC provided support to FARDC military operations against CNDP and groups in Ituri and Haut Uélé. With regard to foreign armed groups, as indicated in paragraph 23 above, MONUC assisted FARDC in developing a plan for military operations against FDLR and trained 10 FARDC battalions for those operations. However, the implementation of the plan within the framework of the Nairobi communiqué was disrupted by the crisis in North Kivu.

50. Prior to the resumption of large-scale hostilities, activities in support of the implementation of the Goma and Nairobi processes were conducted during the reporting period within the framework of the United Nations security, stabilization and support strategy for the eastern part of the Democratic Republic of the Congo, which has four main components, dealing with (a) political and diplomatic aspects; (b) security and military aspects; (c) the extension and consolidation of State authority; and (d) returns and recovery. The resumption of fighting in the Kivus and Ituri had a negative effect on the implementation of the strategy, in some instances leading to the temporary suspension of operations. Despite major setbacks, some progress has been achieved and more than $60 million has been mobilized in support of its implementation.

51. In that connection, MONUC co-chaired and supported the work of the Mixed Technical Commission on Peace and Security before it was suspended. It supported and participated in the activities of the joint monitoring group established pursuant to the Nairobi communiqué. Prior to the resumption of hostilities, extensive political activities were undertaken to seek the agreement of the parties for disengagement, *brassage* and demobilization. Various political initiatives were also launched to ensure the return of parties to the Goma process.

52. The MONUC police presence in the eastern part of the Democratic Republic of the Congo was reinforced, and a MONUC regional police coordinator was deployed to Goma during the reporting period. The Mission also worked with national and provincial counterparts in the vetting, selection and deployment of Congolese National Police officers to be deployed to the eastern part of the country in the context of efforts to extend State authority. In this regard, some 500 out of a total of 2,600 additional national police officers will begin deployment during November. In addition, two MONUC formed police unit platoons have been relocated from Lubumbashi to Goma and have started joint patrols with the national police inside the city.

53. The Mission's efforts to improve FARDC capacity have also continued. To date, 12 FARDC battalions have completed basic training provided by MONUC, which had expected to provide basic training for 20 battalions by the end of 2009. However, the resumption of fighting in the Kivus has delayed the start of training, which may have an impact on the expected completion date. The construction of facilities for the integrated brigades in Ituri, North Kivu and South Kivu is ongoing as part of the broader security sector reform process.

54. Although rehabilitation began on a number of roads in North Kivu, the resumption of hostilities halted further progress. The labour-intensive approach taken had created an estimated 1,300 jobs, which had been expected to rise to more than 4,000 by the end of 2008. Preparations were also under way to begin the construction of police stations, courts, prisons and administrative buildings and to furnish them with basic equipment and supplies. Discussions were also at an

advanced stage with respect to the support to be provided through the strategy for the deployment of local administrative personnel.

55. With regard to the reintegration and community recovery component, MONUC supported the efforts of the Office of the United Nations High Commissioner for Refugees, the Government and neighbouring countries to facilitate the return of refugees from Rwanda, Uganda and Burundi. In addition, funding has been secured to begin recovery activities, starting at the end of the year, for the general population along priority axes in South Kivu.

## IV. MONUC deployment and reconfiguration

56. As at 18 November, the military strength of MONUC stood at 17,354, comprising 16,667 troops and 687 military observers and staff officers, against an authorized strength of 17,790. Of the Mission's 17 battalions, 15 are deployed in the eastern part of the country in four brigades (Ituri, South Kivu, North Kivu and Katanga). The remaining two battalions are deployed in Kinshasa in the Western Brigade. Six aviation units, five engineer companies, one special forces company, two riverine units and other support units provide enabling capacity to the force.

57. Military tasks emanating from the Nairobi and Goma processes, as well as the resumption of major hostilities in the Kivus, have stretched MONUC capacity beyond the limit. The Mission is engaged in intensive operations on four fronts: North and South Kivu, Ituri and Haut Uélé. MONUC is operating in a highly volatile conflict environment in which several illegal armed groups with various agendas and militias that engage in guerrilla warfare are operating with no regard for the civilian population. The extremely limited capacity of FARDC and the inability of many of its units to operate in a cohesive manner have also added to the burden on MONUC in providing security in those areas. As a result of being overstretched, MONUC currently has no force reserve. Consequently, it remains severely hampered in its capacity to respond to emerging security crises in an effective and timely manner.

58. In order to address those capacity constraints, MONUC initiated the process of reconfiguring its force deployment to make the best use of existing capabilities. The process has been ongoing for the past 12 months, with the redeployment of units from other sectors to reinforce those in the Kivus, where, as a result, MONUC has now deployed more than 62 per cent of its force. In North Kivu, the number of MONUC troops has doubled, from three to six battalions, in the past 12 months. More than 5,800 soldiers, or almost 38 per cent of the Mission's overall military strength, are deployed in that province.

59. With the resumption of major hostilities, the reconfiguration process was accelerated and shifted to focus on reinforcing the Mission's military presence in Goma and the surrounding areas. As a result, since 25 October, MONUC has redeployed approximately 500 troops from other sectors of operation to Goma and its environs to respond to the crisis. In addition, an Indian battalion (approximately 800 troops) is in the process of moving from Beni and Butembo to the Goma area in response to the crisis; the Nepalese battalion from the Ituri Brigade will be redeployed in its place. Those efforts are expected to result in the deployment of approximately 3,200 troops in and around Goma to prevent armed groups from taking control of the town and surrounding strategic axes. In addition, MONUC has

deployed two additional attack helicopters, bringing the total number in Goma to four. Four more attack helicopters are also available in South Kivu and Ituri, and can be repositioned in Goma within an hour.

60. With its reconfigured posture and anticipated additional capabilities, MONUC will take every step possible to ensure that no illegal armed groups gain control of Goma. The Mission intends to designate strategic areas which can be protected with all necessary force, within the mandate. Goma will be protected by establishing a strong outer perimeter, and MONUC and the Congolese National Police will enhance internal security in the city through robust patrolling that will be reinforced by a curfew that will remain in place as long as the volatile security situation continues. MONUC will also strive to ensure that key axes leading in and out of Goma are kept open to MONUC and freedom of movement for humanitarian actors and assistance is maintained. In addition, MONUC will protect selected strategic locations, as well as vital Government institutions and officials.

61. In keeping with its mandate, MONUC will draw and enforce, by all means necessary, specific red lines in order to prevent the encroachment of illegal armed groups on vital axes and major population centres in North Kivu, including Sake, Masisi and Kanyabayonga. It will take robust action to protect civilians in imminent threat of danger and prevent attacks on United Nations facilities and personnel as well as humanitarian workers. As the fighting forces withdraw from the front lines, MONUC will deploy troops to monitor the zones of separation, in keeping with the disengagement plan developed by the Mission.

62. With the additional capabilities proposed, the MONUC strategy will also focus on conducting operations from designated zones in the Kivus to compel FDLR to accept disarmament, demobilization, reintegration and resettlement or repatriation. Those efforts will focus on isolating FDLR from its economic interests and building FARDC readiness and capacity to sustain operations against FDLR as well as other armed groups. The additional special forces, training teams and intelligence and air assets would enhance the Mission's capacity in this regard. The additional infantry battalions would serve as a reserve, which is critical to the provision of greater flexibility to deploy as needed to strengthen efforts to protect civilians and provide additional security.

**Additional capabilities**

63. In an oral briefing to the Security Council on 3 October, my Special Representative outlined the additional capabilities that MONUC requires in order to respond to the emerging multiple demands to effectively implement its mandate. At the request of the Security Council, the Department of Peacekeeping Operations provided two military briefings to the Council at the expert level on those additional requirements. In a presidential statement of 29 October (S/PRST/2008/40), the Council expressed its intention to study expeditiously that request in view of the escalation in fighting in the Kivus. As outlined in my letter to the President of the Council dated 31 October (S/2008/703), the following additional capacities, which would increase the Mission's authorized military strength by 2,785 and its formed police unit strength by 300, were requested:

(a) Two infantry battalions (850 each), initially deployed to stabilize the situation in North Kivu;

(b) Two special forces companies (150 each) to enable the Mission to respond to crises as they arise;

(c) Additional air assets to enhance the operational mobility of MONUC, namely, 18 utility helicopters (260 personnel, including crew and ground staff) and 2 C-130 Hercules aircraft (50 personnel each, including crew and ground staff);

(d) Additional information analysis capability (50 personnel) for advanced information collation, analysis and dissemination to enhance situational awareness and to enable timely decision-making;

(e) One engineer company (175 personnel) to support the above-mentioned surge requirements and to execute horizontal engineering work to improve the ground mobility of MONUC forces;

(f) A total of 200 military training instructors/advisers, to support and enhance the Mission's ongoing FARDC training programmes;

(g) Two additional formed police units (150 each) to relieve MONUC military units which are currently diverted to static and force protection tasks.

64. These additional capacities are intended to strengthen MONUC to achieve targeted objectives in line with its mandate, and in particular, give MONUC the force reserve and quick-response capability that is lacking and that would have enabled it to effectively respond to the current crisis; ensure that it has adequate mobility to enable it to move troops to any crisis point in a timely manner; give it the capability to carry out essential engineering work in sensitive areas where civilian engineering contractors cannot operate; and ensure that it has the necessary surveillance capabilities in terms of both equipment and personnel.

**Support for the armed forces**

65. The Security Council has mandated MONUC to support the activities of FARDC, which has the primary responsibility for the territorial integrity and security of the Democratic Republic of the Congo. FARDC continues to face serious capacity, command and control and discipline constraints, and urgent steps will be required to substantially enhance its capacity as the main exit strategy for MONUC. In the meantime, joint operations against armed groups in Ituri, against the FDLR and in the context of containment operations against LRA will also need to continue. They have had an impact, and some FARDC units trained and mentored by MONUC have had some limited success in the field. Those training and joint operational activities have required considerable support from MONUC and would be enhanced as a crucial condition for the success of operations. This cannot be an open-ended commitment or a substitute for comprehensive military training as a fundamental part of security sector reform. However, assistance from MONUC is indispensable and should be considered an investment in preparing FARDC to take over the Mission's residual responsibilities.

66. The challenges faced by FARDC during the ongoing crisis in North Kivu have further highlighted the need for the Government and its bilateral partners to engage on an urgent basis in a major undertaking to build a credible, well-trained, well-equipped and sustained national army. Currently, there are no coherent security sector reform plans to achieve that end. It is crucial that Member States come forward to provide assistance to the Government in that regard.

**Disarmament, demobilization and reintegration**

67. Closely linked to the mandated security sector reform activities will be the technical assistance the Mission would provide to the national programme for disarmament, demobilization and reintegration. The national programme received additional funding of $72 million from the International Development Association and the African Development Bank. The national programme has continued to work with key partners to plan disarmament, demobilization and reintegration for 131,400 combatants, including 31,200 in the Kivus. Progress towards the implementation of the programme will have an impact on, and be affected by, the pace of FARDC integration and the consolidation of the integrated brigades. In this context, the Mission's continuing objective will be to promote and optimize coordination between partners and the national authorities with a view to mobilizing the political will and resources needed to complete urgent disarmament, demobilization and reintegration and army integration tasks.

68. Many challenges remain with regard to disarmament, demobilization and reintegration. The majority of the new target groups are located in the eastern part of the Democratic Republic of the Congo, where the current security situation is not conducive to the implementation of the process. There are many outstanding questions regarding modalities of military integration and disarmament, demobilization and reintegration, including the linkage between the regroupment process as envisaged in the Amani programme and the *brassage*/disarmament process. Furthermore, as many elements within the target groups are expected to be ineligible for disarmament, demobilization and reintegration because of the strict "one-person-one-weapon" criterion, there is an urgent need to develop alternative assistance packages for those individuals. Coordination of these various efforts will therefore be extremely important.

## V. Institutional and governance developments

69. Beyond the eastern part of the Democratic Republic of the Congo, efforts continued, with support from MONUC and other partners, with respect to the consolidation of peace and the reinforcement of the nascent democracy, addressing governance concerns, establishing the rule of law and reconstruction and development. During its extraordinary session, held from 16 June to 15 July, the National Assembly adopted the organic law on the High Council of the Judiciary, as well as laws related to decentralization. Additional legislation required for the completion of the decentralization process, including on provincial boundaries, administrative subdivisions and taxation were not adopted. In accordance with the statement of commitment, a draft amnesty law for North and South Kivu was adopted by the National Assembly on 12 July. The Senate, however, suspended its review of the draft amnesty law following the resumption of fighting in North Kivu. On 15 July, the Senate adopted a draft law on the protection of children, which provides severe penalties for acts of sexual violence and physical abuse, as well as for the recruitment of children by armed forces and groups. The draft must now be adopted by the National Assembly before it can be promulgated. Sustained advocacy by MONUC led to the adoption by the Senate of a draft law creating a national human rights commission.

70. Key legislation on the agenda of the Parliament at its current session, which began on 15 September, includes the 2009 budget, as well as pending laws on decentralization, judicial architecture, elections and the amnesty. In the meantime, the Parliament continued to strengthen its oversight role relating to the activities of the executive branch through investigative commissions and the questioning of ministers.

71. On 25 September, the Prime Minister, Antoine Gizenga, tendered his resignation to President Kabila, citing his advanced age. He resigned amid strong public criticism of the performance of the Government, which is widely perceived to have failed in addressing the socio-economic challenges and security situation in the eastern part of the country.

72. President Kabila appointed the Minister of the Budget, Adolphe Muzito, as Prime Minister on 10 October, in conformity with the terms of an agreement between his coalition, the Alliance pour la majorité présidentielle (AMP), and the Parti lumumbiste unifié (PALU) to appoint a Prime Minister from PALU. The new Cabinet, announced on 26 October, has 53 members, including 4 women, and reflects in part the country's geographical and provincial balance. The President's party, the Parti du peuple pour la reconstruction et la démocratie (PPRD), which is part of AMP, retains two of the three vice-prime ministerial seats and approximately one third of the ministries.

**Local elections**

73. On 15 July, the Elections Steering Committee, composed of the Independent Electoral Commission, the Ministries of the Interior, the Budget, Finance and Planning, MONUC, the United Nations Development Programme (UNDP) and major donors, endorsed the recommendations of the President of the Commission to update the voter register and hold the local elections before the end of June 2009. That decision followed wide consultations and had the explicit support of the Government. On 5 August, the Independent Electoral Commission adopted the procedures for updating the voter register and issued a press release formally launching the electoral process. The field work needed for the voter registration update, which will take two months, is currently expected to start early in 2009. In the meantime, MONUC and UNDP continue to provide technical and operational support to the Commission, including capacity-building in the areas of operational planning and strategy.

74. In a letter to the Independent Electoral Commission, the former Prime Minister indicated that the Government will contribute $62 million in support of the local elections, including for the $24 million annual running costs of the Commission, as well as the voter registration update and other operational activities, estimated to cost $40 million and $120 million, respectively. However, the disbursement of the funds pledged by the Government has continued to face challenges. The remaining $122 million required for the electoral process is expected to be covered by international financing. So far, donors have pledged $70 million, of which $48.5 million has been committed.

75. The adoption of the necessary legislative framework by Parliament remains a real challenge, however. It includes the organic law on the division of territorial entities, which defines electoral constituencies and is a requirement for the launch of the voter registration update and the distribution of seats per constituency. The

law was approved by the Senate in October, and awaits adoption by the National Assembly. Its timely approval will be a major milestone with a view to the holding of the local elections by mid-2009.

**Recovery and peace-consolidation efforts**

76. The economy of the Democratic Republic of the Congo remained vulnerable to the food, energy and financial crises, as well as to the outbreak of conflict in the east. Limited progress was achieved on fiscal decentralization and the reform of key sectors, including infrastructure, mining, oil and forestry. At the same time, the economic growth rate was projected at 10.8 per cent for 2008 and the inflation rate, while still a major concern, decreased from 34 per cent to 28 per cent during the reporting period. An International Monetary Fund mission that visited Kinshasa in September concluded that the Government had made considerable progress in implementing reforms to reach the completion point under the Heavily Indebted Poor Countries Initiative. In the meantime, the Government is operating on a cash-only basis, with a limited budget.

77. Some progress was made on accelerating implementation of President Kabila's five priority areas ("cinq chantiers"), the Priority Action Programme and the governance contract. On 5 August, the Government and international donor partners agreed on an action plan outlining priority steps to be taken by the end of the year to show demonstrable progress in the Priority Action Programme and five priority areas. In the meantime, MONUC continues to support the provincial development committees, which bring together local authorities, civil society actors, United Nations partners, international non-governmental organizations and the private sector. Four committees out of 11 are in place in Bandundu, Maniema, Orientale and Katanga provinces and four others are being set up. In August 2008, MONUC, the Ministry of Planning and international donors facilitated 11 civil society workshops in all of the provinces to promote aid effectiveness, development policies and transparent collaboration between the Government and civil society. Information and sensitization campaigns are also being planned in collaboration with UNDP, Belgium and the United States Agency for International Development on the decentralization process.

## VI. Financial aspects

78. The General Assembly, by its resolution 62/256, appropriated the amount of $1,187,676,400 for the maintenance of MONUC for the period from 1 July 2008 to 30 June 2009. Information on financial implications for the 12-month period arising from my recommendations will be provided to the Council shortly in an addendum to the present report. As at 31 August 2008, unpaid assessed contributions to the Special Account for MONUC amounted to $606.8 million. The total outstanding assessed contributions for all peacekeeping operations as at that date amounted to $3,873.7 million. As at 31 October 2008, the amount owed to troop- and formed-police contributors totalled $21.6 million. Reimbursement of troop/formed police and contingent-owned equipment costs have been made for the period up to August 2008 and December 2007, respectively.

## VII. Observations

79. The crisis in North Kivu has entered a critical phase. The humanitarian toll on the civilian population has been immense. I am deeply concerned that if the crisis is allowed to fester, it will deepen ethnic conflicts in the eastern part of the Democratic Republic of the Congo. The forced displacement of populations and evidence of the targeted killing of civilians are alarming. In the current climate, the possibility of massacres of civilians cannot be ruled out. Recent developments have also underlined the risk of the conflict spilling over into the wider region, with wide-ranging consequences.

80. I welcome the intensified political efforts made to resolve the crisis in recent weeks, including at the bilateral level between the Democratic Republic of the Congo and Rwanda. The concrete proposals for confidence-building measures and cooperation between the two countries should be urgently developed and supported by their international partners. I urge Presidents Kabila and Kagame to spare no effort towards implementing those measures and normalizing relations between their countries. I also welcome the important role of regional and international actors in that regard, and appeal to them to remain engaged in the efforts to find a lasting solution to the crisis in the eastern part of the Democratic Republic of the Congo.

81. The immediate priority should be to end the current fighting initiated by CNDP. I appeal to all neighbouring countries that are in a position to do so to use their moral authority to persuade Laurent Nkunda to fully respect a complete ceasefire, to return to the implementation of the statements of commitment and to cease all military action, which has heretofore exacerbated the very critical humanitarian crisis in North Kivu.

82. Recent events have demonstrated that the lack of capacity of FARDC is a major impediment to peace in the region and to the fulfilment by MONUC of its mandate. The Government of the Democratic Republic of the Congo must take urgent action to establish clear chains of command and discipline within FARDC, while ensuring close cooperation and coordination with MONUC. Priority should also be given by the Government to visible and effective action by the armed forces against FDLR, in accordance with the Nairobi communiqué. MONUC will continue to support the FARDC operations against FDLR, in keeping with its mandate. In this regard, the Government of the Democratic Republic of the Congo is in urgent need of substantial and sustained bilateral assistance to help build a credible and coherent national army capable of guaranteeing the country's territorial integrity and national security as part of a security sector reform plan that adheres to international standards. Such assistance needs to be coordinated among all partners, including MONUC. Efforts to create lasting security and stability in the eastern part of the Democratic Republic of the Congo will not succeed without the development of such a plan. I urge the Government to work closely with its international partners to bring about accelerated and coordinated international action in that regard.

83. There is no military solution to the situation in the eastern part of the Democratic Republic of the Congo. It is therefore imperative that all armed groups return to the implementation of existing political agreements and that all stakeholders work together to address the root causes of conflict in that troubled region. I have asked my Special Envoy to assist all parties in pursuing that goal along with regional leaders and international partners, within the framework of the

regional mechanism established by the Nairobi regional summit. I am encouraged by the positive outcome of his first mission to the region, which has laid the ground for further intensive efforts to put in place an effective ceasefire and reinvigorate a comprehensive political process. I call on all actors to extend to my Special Envoy their full cooperation.

84. Despite the resource limitations of MONUC, it is acknowledged by all that the situation in the eastern part of the Democratic Republic of the Congo would have been far worse without the presence of the Mission and its active role in the protection of tens of thousands of civilians, the facilitation of humanitarian assistance and the prevention of major human rights abuses. The cooperation of the Congolese authorities and people is essential if MONUC is to carry out its mandate for the benefit of the populations affected by the current crisis. I therefore appeal to them to reject all attempts to incite hostility or mobilize populations against MONUC and humanitarian personnel.

85. I recommend that the Security Council extend the mandate of MONUC for an additional 12 months, until 31 December 2009. With the additional resources and its reconfigured posture, MONUC will continue to focus on the priority task of protecting the civilian population in the eastern part of the country, where the authority of the State remains minimal. Working in close coordination with my Special Envoy, MONUC will also support efforts aimed at addressing the root causes of the conflict. In addition, the Mission will continue to provide comprehensive and coherent support to the Goma and Nairobi processes. Those processes, which represent important political commitments by the parties, provide the essential political framework to address the problem posed by CNDP and FDLR.

86. MONUC will press for the simultaneous implementation of the commitments made under both the Goma and the Nairobi processes and will strive, using the means at its disposal, to ensure that all actors act in good faith, including with regard to the implementation of the disengagement plan presented to the parties.

87. MONUC will continue to support the voluntary repatriation of FDLR under the Nairobi process, while at the same time supporting FARDC operations against FDLR. Should the efforts aimed at voluntary disarmament, demobilization, reintegration and resettlement or repatriation not yield further results, the use of force by MONUC may be necessary to compel recalcitrant foreign armed groups on Congolese soil to comply with the Nairobi commitments, in keeping with the Mission's mandate.

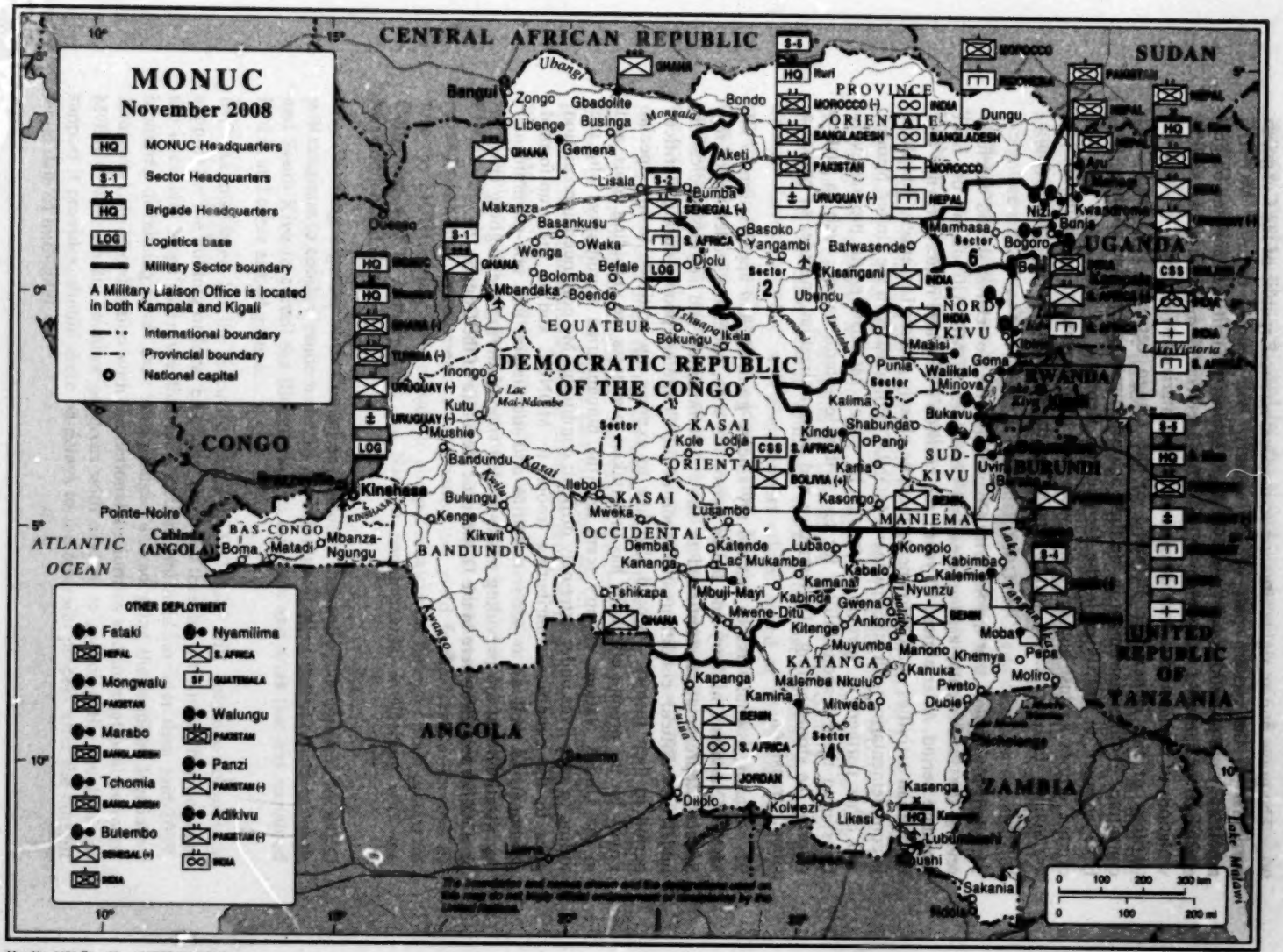
88. Working together with Congolese customs and police authorities, MONUC will continue to conduct random checks at airfields and other transit points in North and South Kivu to curtail the illegal trade in minerals and arms that has sustained FDLR and other armed groups.

89. As mandated by the Security Council, MONUC will continue to provide support for the holding of local elections, provided that the national authorities take the necessary steps to ensure that the elections are held no later than mid-2009, including disbursing funds they have pledged and adopting the required legislative framework. In coordination with the national authorities and international partners, MONUC will closely monitor progress with a view to reducing the level of the support it provides, should there be delays to the electoral process after the current target date of mid-2009.

90. The grave human rights situation in the Democratic Republic of the Congo, in particular in the eastern part of the country, will require ongoing MONUC monitoring and promotion activities. The fight against impunity remains the biggest challenge in the area of human rights. The exercise to map the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between 1993 and 2003 constitutes another instrument in the fight against impunity. I remind all those who have engaged in hostilities in the Democratic Republic of the Congo that war crimes, crimes against humanity and violations of international humanitarian law are subject to international justice, including through the International Criminal Court.

91. I firmly believe that the Security Council and the Secretariat should carefully review the fundamental assumptions and objectives of MONUC during the next mandate period. After almost 10 years, the Mission's structure requires review and its civilian activities and deployments must be closely assessed to ensure that there is complementarity with other partners. MONUC will work with the United Nations and other partners to develop a strategy by which MONUC could progressively transfer to them responsibilities for tasks of a long-term nature, such as justice reform, the strengthening of governance and decentralization, in order to ensure a smooth transition.

92. Finally, I would like to express my sincere gratitude and appreciation to all MONUC civilian, military and police personnel, who, under the leadership of my Special Representative, continued to show determination and selfless dedication under very difficult conditions in support of the Congolese people during a critical period in their history. I would also like to express my gratitude to my Special Envoy for the prompt efforts he has undertaken to address the unfolding crisis, and to the United Nations country team and the humanitarian community, who are toiling to save lives under extremely difficult conditions. My continued appreciation goes to the countries contributing troops to MONUC and to their uniformed personnel, as well as to donor countries and multilateral and non-governmental organizations that are providing much-needed support during the ongoing crisis in North Kivu and elsewhere in the Democratic Republic of the Congo.

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